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**THE  
COMMERCIAL LAWS OF THE WORLD**

**VOLUME XVII**

**BRITISH DOMINIONS AND PROTECTORATES  
IN AMERICA**

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#### AMERICAN EDITION

THE COMMERCIAL LAWS OF THE WORLD, EDITED BY  
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# THE COMMERCIAL LAWS OF THE WORLD

COMPRISING

THE MERCANTILE, BILLS OF EXCHANGE, BANKRUPTCY  
AND MARITIME LAWS OF ALL CIVILISED NATIONS

TOGETHER WITH

COMMENTARIES ON CIVIL PROCEDURE,  
CONSTITUTION OF THE COURTS, AND  
TRADE CUSTOMS

IN THE ORIGINAL LANGUAGES INTERLEAVED  
WITH AN ENGLISH TRANSLATION

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*NUMEROUS EMINENT SPECIALISTS OF ALL NATIONS*

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# COMMERCIAL LAWS OF THE WORLD

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BY THE EDITOR

CONSTITUTION OF THE UNITED STATES  
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IN THE OFFICE OF THE EDITOR  
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BRITISH EDITION

OF THE LAWS OF THE UNITED STATES

THE LAWS OF THE UNITED STATES  
AND THE LAWS OF THE UNITED STATES

BY THE EDITOR

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IN THE OFFICE OF THE EDITOR

THE EDITOR

WITH A PREFACE BY THE EDITOR

BY THE EDITOR



# **THE COMMERCIAL LAW OF CANADA, NEWFOUNDLAND, BERMUDA, BRITISH HONDURAS, AND FALKLAND ISLANDS**

BY

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LELAND STANFORD JUNIOR UNIVERSITY (CALIFORNIA).

# **THE COMMERCIAL LAW OF BRITISH GUIANA, TRINIDAD AND TOBAGO, JAMAICA, BAHAMAS, BARBADOS, LEEWARD ISLANDS, AND WINDWARD ISLANDS**

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# Canada.

## Introduction.

The Dominion of Canada now comprises the Provinces of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan, the North-West Territories (now consisting of the districts of Ungava, Franklin, Mackenzie, and other territories not included in any province or in the Yukon Territory), and the Yukon Territory. Geographically it comprises all of the British possessions on the continent of North America, except the Labrador Coast, which is politically a part of the Colony of Newfoundland.

## History and government.

Canada was discovered by Sebastian Cabot in 1497, and formally taken possession of by the French in 1525. The first settlement (Quebec) was founded in 1608. From 1629 to 1632 Quebec was in the possession of the English. In 1763, by the Treaty of Paris, Canada was definitively ceded by France to England. Nova Scotia, a part of Acadia, was taken by the English and granted in 1621 to Sir William Alexander, but was restored to France in 1632. By the Treaty of Utrecht (1713) it came again into the possession of England, and under the Treaty of Paris (1763) France finally renounced all rights to this territory. New Brunswick formed a part of the French Province of Acadia and followed the fate of that territory. In 1762 and 1783 a large body of English subjects came to New Brunswick from New England, and in 1784 New Brunswick was made a separate Colony. Prince Edward Island, which was annexed to Nova Scotia after the Treaty of Paris, was, in 1769, made a separate Colony. Ontario and Quebec were divided into two Provinces in 1791, under the names of Upper Canada and Lower Canada respectively. In 1840 they were united under the name of the Province of Canada, and again separated in 1867.

The Dominion was formed in 1867 under the British North America Act<sup>1</sup>), and originally comprised the Provinces of Quebec, Ontario, Nova Scotia, and New Brunswick. Rupert's Land and the North-West Territories were admitted in 1870, British Columbia (including Vancouver Island) in 1871, and Prince Edward Island in 1873. The Province of Manitoba was created in 1870, and the Provinces of Alberta and Saskatchewan in 1905, out of the Territories. The Yukon Territory was constituted in 1898.

In the Dominion the executive power is vested in a Governor-General appointed by the Crown, assisted by a Privy Council appointed by the Governor-General. The Cabinet is chosen as in England. The legislative power is vested in a Parliament consisting of the King, a Senate, and a House of Commons. The members of the Senate are nominated for life by the Governor-General, the members of the House of Commons are elected for five years by the voters in the several Provinces. The franchise is regulated by the Provinces.

In the Provinces the executive power is vested in a Lieutenant-Governor, appointed by the Governor-General, assisted by an executive council. The legislative power is vested in local legislatures consisting of a single chamber, except in Quebec and Nova Scotia, where the organization is bi-cameral.

The North-West Territories and the Yukon Territories are governed under Dominion Acts. In both there are a Commissioner and a Legislative Council.

Canada has been given almost complete autonomy in matters affecting the commercial interests of the Empire. Even a protective tariff directed not only against the competition of foreign nations, but also against the competition of British manufacturers, has not been interfered with by the Home Government.

<sup>1</sup>) 30 & 31 Vic. c. 3 — cited as B. N. A. Act, 1867. Amended by 33 & 34 Vic. c. 28, 49 & 50 Vic. c. 35.



It is, of course, within the power of the Imperial Government by Act of Parliament to resume a part or the whole of the powers conferred on the Dominion, or to override by means of a treaty with foreign countries the provisions of a Canadian Act. But in fact the tendency has been to accord ever-increasing power to the Canadian government and in diplomatic negotiations affecting Canadian interests to act only after ascertaining the wishes of the Dominion Government.

### The Dominion and the Provinces.<sup>1)</sup>

The fundamental principles embodied in the British North America Act, 1867, are: "a federation with a central government exercising general powers over all the members of the Union, and a number of local governments having the control and management of certain matters naturally and conveniently falling within their defined jurisdiction, while each government is administered in accordance with the British system of parliamentary institutions<sup>2)</sup>."

The constitutional relations between the Dominion and the Provinces have been frequently likened to those between the Union and the States in the United States. Upon this point a high authority says: "A careful comparative review of the powers distributed between the central and State or Provincial governments shows us that in certain essential features there is in the Constitution of the Dominion of Canada a more marked division of legislative authority than in that of the United States. An important distinction exists between the powers given to the central government of Canada and those placed by the constitution of the United States under the jurisdiction of the federal authority. The powers of the Dominion government cover all those not expressly given by the Constitutional Act to the Provinces, the very reverse of the principle at the basis of the United States instrument"<sup>3)</sup>.

In relation to all matters not coming within the classes of subjects assigned exclusively to the Provinces the Dominion Parliament is empowered to make laws relating to the following matters of a commercial nature<sup>4)</sup>: 1. The regulation of trade and commerce. Uncontrolled by the context these words are sufficiently wide to include every regulation of trade, ranging from political arrangements in regard to trade with foreign governments down to minute rules for regulating particular trades. But it seems that a narrower interpretation must be given. They cover, however, the regulation of trade in matters of inter-provincial concern, and possibly general regulations of trade affecting the whole Dominion. But they do not comprehend the power to regulate by legislation the conduct of a particular business or trade, such as the business of fire insurance, in a single Province<sup>5)</sup>. The Provinces retain the power of local taxation<sup>6)</sup>, and, in the absence of any general Dominion Act, the regulation of particular trades and commercial transactions is within the jurisdiction of the Provinces<sup>7)</sup>. The fact that Provincial legislation prejudicially affects trade and commerce<sup>8)</sup> does not render it ultra vires<sup>9)</sup>; 2. Navigation and shipping. These words must also be restricted in their interpretation in the same manner as the words "regulation of trade and commerce," supra<sup>10)</sup>. The Provinces may not authorize obstructions to navigation amounting to a nuisance<sup>11)</sup>, but still retain certain police jurisdiction over the navigable waters. But for the purposes of navigation the Dominion Parliament may enact necessary laws<sup>12)</sup>. In the exercise of its power the Dominion Parliament has enacted a Shipping Act<sup>13)</sup>, a Bills of Lading Act<sup>14)</sup>, and an Act relating to marine bills of lading<sup>15)</sup>. It must also be recalled that the Imperial Shipping Acts are in force; 3. Seacoast and inland fisheries; 4. Ferries between a Province and any British or foreign country,

<sup>1)</sup> See the following works on Canadian constitutional law: Bourinot, *Federal government in Canada*; Bourinot, *Canadian studies in comparative politics*; Bourinot, *Constitutional history*; Clement, *Canadian constitution*; Cartwright, *Constitutional cases*; Doutre, *Constitution of Canada*; Haggard, *Canadian constitutional history and law*; Houston, *Documents illustrative of the constitution of Canada*; Lefroy, *Legislative power in Canada*; Munro, *Constitution of Canada*; O'Sullivan, *Government in Canada*; Pope, *Confederation documents*; Watson, *Powers of Canadian parliaments*; Wheeler, *Confederation law of Canada*. — <sup>2)</sup> Bourinot, *Federal government in Canada*, pp. 32, 33. — <sup>3)</sup> Bourinot, *Comparative politics*, pp. 43, 44. — <sup>4)</sup> B. N. A. Act, 1867, § 91. — <sup>5)</sup> Parson's Case, (1881), 7 A. C. 96. — <sup>6)</sup> Lambe's Case, (1887), 12 A. C. 575. — <sup>7)</sup> Clement, l. c., p. 203. — <sup>8)</sup> E. g. taxation of commercial travellers. — *Poole v. Victoria*, (1892), 2 B. C. 271. — <sup>9)</sup> Clement, l. c., pp. 205, 206. — <sup>10)</sup> Clement, l. c., p. 210. — <sup>11)</sup> *Queddy River Boom Co. v. Davidson*, (1883), 10 S. C. R. 222. — <sup>12)</sup> *Central Vermont Railway Co. v. St. John*, (1886), 14 S. C. R. 288. — <sup>13)</sup> R. S. C., 1906, c. — <sup>14)</sup> R. S. C., 1906, c. — <sup>15)</sup> Acts, 1910, c. 61.

or between two Provinces; 5. Currency and coinage; 6. Banking, incorporation of banks, and the issue of paper money. The legislative authority conferred by these words is not confined to the privilege of carrying on the business of banking, it extends to the issue of paper currency, and comprehends every transaction coming within the legitimate business of a banker<sup>1</sup>). It includes the power to make laws in reference to collaterals held as securities for loans. The power has been exercised in the enactment of the Dominion Bank Act, and in other Acts; 7. Weights and measures; 8. Bills of exchange and promissory notes; 9. Interest; 10. Legal tender; 11. Bankruptcy and insolvency. These words describe the "provisions made by law for the administration of the estates of persons who may become bankrupt or insolvent, according to rules and definitions prescribed by law, including, of course, the conditions on which that law is to be brought into operation, the manner in which it is to be brought into operation, and the effect of its operation"<sup>2</sup>). There is no Dominion Act at present in force relating to bankruptcy and insolvency, except the Dominion Winding-up Act, which is confined to companies. In the absence of Dominion legislation the Provinces may pass insolvency laws<sup>3</sup>); 12. Patents of invention and discovery; 13. Copyrights.

The Provinces are empowered to make laws relating, *inter alia*, to the following subjects<sup>4</sup>): 1. Local works and undertakings other than such as are of the following classes: a) Lines of steam or other ships, canals, telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province; b) Lines of steamships between the Province and any British or foreign country; c) Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces; 2. The incorporation of companies with Provincial objects. The incorporation of companies with objects other than Provincial falls within the general powers of the Dominion Parliament<sup>5</sup>). A company chartered under the Dominion Act may, however, in fact limit its operation to a single Province<sup>6</sup>). "The difference between a Dominion and a Provincial company is in the territorial sphere, within which the company's powers may be, not in that within which they are actually, exercised"<sup>7</sup>). The Dominion Winding-up Act is in the nature of an insolvency law, and consequently companies organized under Provincial Acts are subject to its Provisions<sup>8</sup>). But where a company is not insolvent, it may be wound up under the Provincial Acts. Dominion companies, at least in the absence of Dominion legislation, are subject to the local laws of the Province in regard to the trade in which they are engaged<sup>9</sup>). The holding of land would be subject to Provincial regulation. The extent to which the Province may regulate Dominion companies by requiring them to take out licenses in order to carry on business within the Province has not been fully determined; 3. Property and civil rights in the Province. As to the meaning of the words "civil rights" it has been held that they include contracts and the rights arising from them, except in so far as these matters are within the scope of the powers of the Dominion Parliament<sup>10</sup>).

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Name.	No. of vol-umes.	Period.	Method of citation.
*Supreme Court Reports		1876—1911	S. C. R.
Cameron's Supreme Court Cases	1	1877—1905	Cam. Cas.
Coutlée's Supreme Court Cases	1		Cout. Cas.
*Exchequer Court Reports	13	1895—1911	Ex. C. R.
*Canadian Criminal Cases	16	1898—1911	Can. Cr. Cas.
*Canadian Commercial Law Reports		1901—1911	Can. Com. Cas.
*Canadian Railway Cases	10	1902—1911	Can. Ry. Cas.
Cartwright's Constitutional Cases	5	1869—1896	Cart. B. N. A.
Hunter's Torrens Cases	1	Up to 1894	Hunt. Tor. Cas.
*Canadian Reports Appeal Cases	4	1828—1858 1908—1911	C. R. A. C.
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Name.	No. of vol-umes.	Period.	Method of citation.
*Alb. Law Reports	2	1908—1911	Alb.
*Western Law Reporter	15	1905—1911	West. L. R.

<sup>1)</sup> See also the periodicals given below sub. C. All of these contain reports of cases. An asterisk (\*) denotes current series. — <sup>2)</sup> Including such reports and digests as cover more than one Province. — <sup>3)</sup> See also North-West Territories.

*b) British Columbia.***A. Reports.**

Name.	No. of vol- umes.	Period.	Method of citation.
*B. C. Law Reports	15	1867—1911	B. C.
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*Western Law Reporter	15	1905—1911	West. L. R.

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*Manitoba Law Reports	20	1883—1911	Man. R., or Man.
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Western Law Times	6	1890—1895	West. L. T.
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Name.	No. of vol- umes.	Period.	Method of citation.
Chipman's Mss.	1	1825—1835	(1— ) N. B.
Berton, 2d ed.	1	1835—1839	
Kerr	3	1840—1848	
Allen	6	1848—1866	
Hannay	2	1867—1871	
Pugsley	3	1872—1877	
Pugsley & Burbridge	4	1878—1882	Tru. Eq. Cas.
*N. B. Reports	19	1883—1911	
Trueman's Equity Cases	1	1876—1893	
*Trueman's Equity Reports	4	1894—1911	
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Supreme Court Reports	2	1887—1898	Terr. S. C. R.
*Territories Law Reports	6	1885—1906	Terr. L. R.
*Western Law Reporter	15	1905—1911	West. L. R.

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Name.	No. of vol-umes.	Period.	Method of citation.
Thomson's Decisions	1	1834—1853	(1—44) N. S.
James' Decisions	1	1853—1855	
Thomson's Reports	1	1856—1859	
Cochran's Reports	1	1859	
Oldright's Reports	2	1860—1867	
Nova Scotia Decisions	3	1867—1874	
Russell & Chesley	3	1875—1879	
Russell & Geldert	15	1879—1895	
Geldert & Russell	12	1895—1907	
Wallace (hitherto unreported)	1		
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Ritchie's Equity Cases	1	1872—1882	
Young's Vice-Admiralty	2	1865—1880	
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Russell's Election Cases	1	1874	
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Appeals			
Grant's Error and Appeal Reports	3	1846—1866	Grant E. & A.
*Ontario Appeal Reports	27	1876—1911	O. A. R.
King's Bench			
Taylor	1	1823—1831	Tay.
Draper	1	1828—1831	Dra.
U. C. King's Bench Reports (old series)	6	1831—1844	U. C. K. B.
U. C. Queen's Bench Reports (new series)	46	1844—1881	U. C. Q. B.
Common Pleas			
U. C. Common Pleas Reports	32	1850—1881	U. C. C. P.
Chancery			
Grant's U. C. Chancery Reports	29	1849—1882	Grant.
Chambers and Practice Cases			
U. C. Chambers Reports	2	1846—1852	U. C. Chamb.
Chancery Chambers Reports	4	1857—1872	Chamb.
Lefroy & Cassels' Practice Cases	1	1881—1883	Lef. & Cas.
Practice Reports	19	1848—1901	O. P. R.
Reports in all Courts			
Ontario Reports	32	1882—1900	O. R.
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*Ontario Weekly Reporter	18	1902—1911	O. W. R.
Election Cases			
Patrick	1	1824—1849	Patr. Elect. Cas.
Hodgins	1	1871—1879	Hodg. Elect. Cas.
Ontario Election Cases	2	1884—1900	Ont. Elect.
Miscellaneous			
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Name.	No. of vol-umes.	Period.	Method of citation.
Peters	1	1850—1872	Pet.
Hazzard & Warburton	2	1850—1882	H. & W.
*Eastern Law Reporter	8	1906—1911	East. L. R.

*i) Quebec.***A. Reports.**

Name.	No. of vol-umes.	Period.	Method of citation.
Jugements du Conseil Souverain	4	1663—1693	Cons. Souv.
Jugements du Conseil Supérieur	2	1705—1716	Cons. Sup.
Perreault's Precedents	2	1726—1759	Per.
Pike's Reports	1	1809—1810	Pike.
Stuart's Reports, King's Bench	1	1810—1835	Stu. K. B.
Stuart's Reports, Vice-Admiralty	2	1836—1874	Stu. Adm.
Lower Canada Reports	17	1850—1867	L. C. R.
Seigniorial Reports	2	1856	Seign. Rep.
Montreal Condensed Reports	1	1853—1854	Mont. Cond. Rep.
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Quebec Law Reports	17	1874—1881	Q. L. R.
Dorion's Queen's Bench Reports	4	1880—1884	Dorion.
Montreal Law Reports, Queen's Bench	7	1885—1891	M. L. R. Q. B.
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Name.	No. of vol-umes.	Period.	Method of citation.
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## Organization and Jurisdiction of Courts. Limitation of Actions.

The judicial system comprises the Dominion Courts and the several Courts of the Provinces or Territories.

### I. Dominion Courts.

The Dominion Courts are the Supreme Court of Canada and the Court of Exchequer. The Supreme Court consists of a Chief Justice and five Puisne Judges, and exercises appellate jurisdiction throughout the Dominion. An appeal lies to the Supreme Court from the Exchequer Court of Canada, in cases in the Provincial Courts arising under the Winding-up Acts, and in certain other cases. The conditions of appeal from the Courts of the Provinces to the Supreme Court of Canada vary greatly. An appeal lies to the Supreme Court from any final judgment of the highest Court of final resort in the Province, whether such Court is a Court of Appeal or of original jurisdiction, in cases in which the court of original jurisdiction is a superior court; and also in cases in which the court of original jurisdiction is not a superior court in the following cases: 1. In Quebec if the matter involves some right of His Majesty, or future rights in lands or tenements, or amounts to \$ 2000; 2. in Nova Scotia, New Brunswick, British Columbia, and Prince Edward Island if the sum involved is \$ 250 or upwards, and the court of first instance possesses concurrent jurisdiction with a superior court; 3. in Saskatchewan and Alberta by leave of the Supreme Court of Canada or a Judge thereof.

In Quebec an appeal lies to the Supreme Court of Canada from any judgment of the Superior Court in Review, where that Court confirms the judgment of the Court of first instance, and its judgment is not appealable to the Court of King's Bench, but is appealable to the Privy Council.

Except under special conditions the appeal must be from the highest court of last resort in the Province, and ordinarily only from a final judgment. In Quebec the amount involved must be \$ 2000 or over, in Ontario, \$ 1000 or over.

The Court of Exchequer consists of a single Judge, and has jurisdiction in cases where relief is sought against the Crown, suits by the Crown, in revenue cases, patents, copyright and design cases, and is a Colonial Court of Admiralty. An appeal lies to the Supreme Court where the amount involved exceeds \$ 500, and by leave of a judge of the Supreme Court in certain other cases.

### II. Provincial and Territorial Courts.

In Alberta there are a Supreme Court and a number of District Courts. The Supreme Court consists of five Judges, three of whom constitute a quorum. The jurisdiction is exercised by single Judges and in banc, and extends to all civil and criminal matters, except small debt cases. The District Courts presided over by a Judge, have jurisdiction in civil cases where the amount involved does not exceed \$ 400. Appeals lie to the Supreme Court of the Province.

In British Columbia there are four Courts with civil jurisdiction: the Supreme Court, sitting as a Court of Appeal, the Supreme Court, sitting as a Trial Court, the Supreme Courts, and Small Debt Courts. The Small Debt Courts have jurisdiction concurrent with the County Courts and the Supreme Courts at Nisi Prius, where the amount involved does not exceed \$ 100, but no jurisdiction in cases where the title to land is involved, or in probate. An appeal lies to the County Court or to a Judge of the Supreme Court. The County Courts have jurisdiction, concurrent with the Supreme Court, in personal actions for debt or damages where the amount involved does not exceed \$ 1000, equitable jurisdiction (e. g. accounts and specific performance) where the amount does not exceed \$ 2500, and in certain other cases. By consent of parties the jurisdiction may be extended to cases otherwise not within the jurisdiction of the Court. An appeal lies to the Supreme Court. The Supreme Court, sitting as a Trial Court, has general jurisdiction, civil and criminal, throughout the Province, with an appeal to the Supreme Court sitting as a Court of Appeal.

The judicial organization of Manitoba comprises the Court of Appeal, the Court of King's Bench, County Courts, and Surrogate Courts. The Surrogate Courts have jurisdiction in probate and related matters. The County Courts have juris-



diction in actions on contract and in tort where the amount involved is less than \$ 500. The Court of King's Bench is a Court of record of general original jurisdiction. The Court of Appeal has appellate jurisdiction.

In New Brunswick there are Justices' Courts with jurisdiction in actions of debt up to \$ 200, Parish Courts, with similar jurisdiction up to \$ 80, County Courts with jurisdiction up to \$ 400, and the Supreme Court, with general jurisdiction, original and appellate.

In Nova Scotia the Supreme Court has original jurisdiction when the amount involved is not below \$ 20, and appellate jurisdiction over the inferior Courts. The County Courts have jurisdiction *inter alia* in cases of debt where the amount involved is not less than \$ 20 and not in excess of \$ 300. Magistrates' Courts have jurisdiction up to \$ 80.

The judicial organization of Ontario comprises the High Court, County and District Courts, and Division Courts. The High Court has general jurisdiction throughout the Province. An appeal lies to a Divisional Court of the High Court and thence to the High Court sitting as a Court of Appeal. The County and District Courts are presided over by a single Judge, and have jurisdiction, *inter alia*, in actions arising out of contract where the sum claimed does not exceed \$ 800, partnership actions where the capital of the partnership does not exceed in value \$ 2000, and actions and contestations for the determination of the right of creditors, where the claim of the creditor does not exceed \$ 500. An appeal lies to a Divisional Court of the High Court. The Division Courts are presided over by a Judge of the County Court. They have jurisdiction in personal actions where the amount claimed does not exceed \$ 60, or by consent of the parties, where the amount does not exceed \$ 100, on balance of account not exceeding \$ 100, in actions of debt up to \$ 200 where the amount claimed is ascertained by the signature of the defendant. Subject to certain exceptions, an appeal lies to a Divisional Court of the High Court.

In Prince Edward Island the Supreme Court exercises appellate jurisdiction, and also original jurisdiction in claims over \$ 32. The County Courts have original jurisdiction in claims up to \$ 150.

In Quebec the Commissioners' Courts have jurisdiction up to \$ 25, and the Circuit Courts up to \$ 200 (except in the Districts of Montreal and Quebec, where the limit is \$ 100). Cases exceeding the above limits are instituted in the Superior Court. An appeal lies from the Commissioners' Courts to the Circuit Court, and from the Circuit Court and Superior Court to the Court of Review. In appeals where the amount involved is less than \$ 500 the determination of the Court of Review is final. Appeals from the Superior Court, where the amount involved is more than \$ 500 may be taken either to the Court of Review or to the Court of Appeals. There is no appeal from the Court of Review to the Court of Appeal in cases where the Court of Review affirms the judgment of the Court below, but if the amount exceeds \$ 5000 there is an appeal to the Supreme Court of Canada. If the Court of Review reverses the judgment of the lower Court, and the amount is \$ 500 or upwards there is an appeal to the Court of Appeal. An appeal lies from the Court of Appeals to the Supreme Court of Canada where the amount involved is \$ 2000 or upwards.

The judicial organization of Saskatchewan is similar to that of Alberta. In the North-West Territories jurisdiction, civil and criminal, is exercised by stipendiary magistrates. In the Yukon Territory the Territorial Court is a court of general jurisdiction, civil and criminal. Where the amount involved exceeds \$ 500 an appeal lies to the Supreme Court sitting as a Court of Appeal, and thence to the Supreme Court of Canada. An appeal also lies direct to the Supreme Court of Canada.

### III. Appeals to Privy Council.

An appeal lies from the Supreme Court to the Privy Council by special leave. From the Provinces an appeal lies direct to the Privy Council on the conditions set forth in the accompanying table.

# Conditions of Appeal to the Privy Council.<sup>1)</sup>

Province or Territory.	Authority under which appeals are tendered.	Appellable amount.	Limit of time within which leave to appeal must be asked.	Security required.
1. Alberta.	Order in Council, 10th January, 1910.	Final judgment where the matter in dispute amounts to or is of the value of £ 1000, or involving directly or indirectly claim to property or civil right amounting to or of the value of £ 1000. From interlocutory judgment, by leave. Pro forma judgment sufficient.	Twenty-one days.	Execution may be stayed or not. Where judgment is carried into execution, respondent must furnish security. Appellant to give security not exceeding £ 500 in all cases. Security to be found within three months from date of hearing of application for leave to appeal.
2. British Columbia.	Order in Council, 23d January, 1911.	Final order, judgment, or decree for any sum more than, or involving directly or indirectly any claim to property in civil right amounting to or of value of £ 500. From interlocutory judgment, by leave. Pro forma judgment sufficient.	Twenty-one days.	Execution may be stayed or not; if not, respondent must give good and sufficient security. In all cases appellant must give security, regulated by Court below, and not exceeding £ 500, within three months from date of petition for leave to appeal.
3. Manitoba.	Man. Stat. 48 Vic. No. 48. Order in Council, 16th March and 26th November, 1892 (Stats. of Canada, 1892, p. 13; Stat. R. and O. Rev. 1904, Vol. VI. "Judicial Committee," p. 55).	From any judgment for sum of, or involving directly or indirectly any claim to property or civil right above £ 300.	Fourteen days.	Execution may be stayed or not; if not, respondent must give good and sufficient security. In all cases appellant must give security, regulated by Court below, and not exceeding £ 500, within three months from date of petition for leave to appeal.
4. New Brunswick.	Order in Council, 27th November, 1852 (Stat. R. and O. Rev., 1904, Vol. VI. "Judicial Committee", p. 61).	Final judgment for sum above, or involving directly or indirectly claim to property in civil right amounting to or of value of £ 300; or questions whereby the rights of His Majesty, his heirs or successors, may be bound; or, by leave of the Court, from interlocutory judgment. Pro forma judgment sufficient.	Fourteen days.	The Court may direct judgment to be carried out, respondent giving good and sufficient security, or suspended. Appellant's security regulated by Court below, and not to exceed £ 500. Within twenty-eight days of motion for leave to appeal.
5. North-West Territories. Remarks. — No direct appeal to the Privy Council.				
6. Nova Scotia.	Order in Council, 5th July, 1911.	Final judgment for sum above, or involving directly or indirectly claim to property in civil right amounting to or of value of	Fourteen days.	The Court may direct judgment to be carried out, respondent giving good and sufficient security, or suspended. Appellant's security regulated by the Court below, and not to

7. Ontario.	Ont. Acts 1910, c. 24.	£ 500. Pro forma judgment sufficient.	Where the matter in controversy exceeds the sum or value of \$ 4000, as well as in any case where the matter in question relates to the taking of any annual or other rent, customary or other duty, or fee, or any like demand of a general or public nature affecting future rights, regardless of amount.	No time prescribed.	Not exceeding \$ 2000. Execution stayed on security being perfected. Security must be approved by a Judge of the Court of Appeal.	exceed £ 500, within three months of motion for leave to appeal.
8. Prince Edward Island.	Order in Council, 13th October, 1910.	Final judgment where the matter in dispute amounts to or is of the value of £ 500, or involving directly or indirectly claim to property or civil right amounting to or of the value of £ 500. From interlocutory judgment by leave. Pro forma judgment sufficient.	Final judgment where the matter in dispute amounts to or is of the value of £ 500, or involving directly or indirectly claim to property or civil right amounting to or of the value of £ 500. From interlocutory judgment by leave. Pro forma judgment sufficient.	Twenty-one days.	Execution may be stayed or not. Where judgment is carried into execution, respondent must furnish security. Appellant to give security in all cases, not exceeding £ 500. Security to be found within three months from date of hearing of application for leave to appeal.	Execution may be stayed or not. Where judgment is carried into execution, respondent must furnish security. Appellant to give security in all cases, not exceeding £ 500. Security to be found within three months from date of hearing of application for leave to appeal.
9. Quebec.	Code of Civil Procedure, arts. 88, 69. See Safford and Wheeler, Privy Council Practice, pp. 401 et seq.	From final judgment where sum in dispute exceeds £ 500; also where it relates to moneys payable to His Majesty. As to appeals by special leave, see <i>Clergue v. Murray</i> , (1903) A. C. 521; or matters by which future rights may be affected.	From final judgment where sum in dispute exceeds £ 500; also where it relates to moneys payable to His Majesty. As to appeals by special leave, see <i>Clergue v. Murray</i> , (1903) A. C. 521; or matters by which future rights may be affected.	No time prescribed.	Good and sufficient security to prosecute appeal, and to pay sum due and costs of appeal unless no consent to execution of judgment, in which case only security for costs of appeal. Execution can not be prevented, after six months from date of allowance of appeal, unless appellant files certificate that appeal lodged.	Good and sufficient security to prosecute appeal, and to pay sum due and costs of appeal unless no consent to execution of judgment, in which case only security for costs of appeal. Execution can not be prevented, after six months from date of allowance of appeal, unless appellant files certificate that appeal lodged.
10. Saskatchewan.	Order in Council, 13th October, 1910.	Final judgment where the matter in dispute amounts to or is of the value of \$ 4000, or involving directly or indirectly claim to property or civil right amounting to or of the value of \$ 4000. From interlocutory judgment by leave. Pro forma judgment sufficient.	Final judgment where the matter in dispute amounts to or is of the value of \$ 4000, or involving directly or indirectly claim to property or civil right amounting to or of the value of \$ 4000. From interlocutory judgment by leave. Pro forma judgment sufficient.	Fourteen days.	Execution may be stayed or not. Where judgment is carried into execution, respondent must furnish security. Appellant to give security not exceeding \$ 2500, in all cases. Security to be found within three months.	Execution may be stayed or not. Where judgment is carried into execution, respondent must furnish security. Appellant to give security not exceeding \$ 2500, in all cases. Security to be found within three months.
11. Yukon Territory.	Remarks. — Au appeal lies to the Supreme Court of British Columbia, and thence to the Privy Council on conditions governing appeals from that Province.					

<sup>1</sup> Reprinted, by permission, from *Burge's Colonial and Foreign Law*, Vol. I. pp. 379—382. The order of presentation has been slightly altered. The amendments up to 1st January, 1912, have been incorporated.



#### IV. Limitation of Actions.

In all of the Provinces, except Quebec, promissory notes and acceptances of bills of exchange are subject to a six-year period of limitation. In Quebec the period is five years. This is calculated from maturity of the instrument or from the last payment of principal or interest made thereon, or from the date of formal acknowledgment, or in the case of demand paper from the date of the instrument in the case of a note, or from the date of the acceptance, in the case of a bill of exchange. As against the indorsers of demand instruments the period of limitation does not begin to run until due presentment for payment and dishonour of the instrument.

Merchants' accounts and other contracts not under seal must be sued on within six years next after the cause of action arose, except in Quebec, where they must be sued on within five years. This period is calculated in the case of accounts on each item of the account, and not from the date of the monthly or other statement. On an account stated the period begins to run from the date of such account. Part payment or formal acknowledgment of indebtedness will cause a new period of limitation to begin.

In Quebec the lapse of the period of five years extinguishes the obligation itself, and no part payment on or acknowledgment of a debt so barred will revive the rights of the creditors.

### Dominion Statutes.<sup>1)</sup>

#### Companies.

##### a) R. S. C. 1906, c. 79. An Act respecting Companies.<sup>2)</sup>

###### *Short title.*

**Short title.** 1. This Act may be cited as the *Companies Act*.  
Imp. § 295.

#### *Part I. Joint Stock Companies.*

##### *Application of Part.*

**New companies. Old companies.** 2. [As amended by 7 & 8 Edw. 7, c. 16, § 1.] This Part applies to: a) All companies incorporated under it; b) All companies incorporated under the *Companies Act*, chapter one hundred and nineteen of *The Revised Statutes of Canada*, or to which that Act applied before the fifteenth day of May, one thousand nine hundred and two, excepting loan companies; c) All companies incorporated under *The Companies Act, 1902*.

2 Edw. 7, c. 15, § 2. As to the jurisdiction of Provincial Legislatures to legislate respecting the licensing of companies incorporated under this Act see notes to Ontario Extra Provincial Corporations Act (63 Vic. c. 24), §§ 3, 6, *infra*. In *Cooper v. McIndoe*, (1887), 15 Rev. Leg. 276, it was held that a company incorporated by the Dominion Parliament can not exercise its powers in the Province of Quebec without conforming to arts. 364, 365, and 366 of the Civil Code. In *Colonial Buidling, etc., Association v. The Attorney-General of Quebec*, (1883), 9 A. C. 157 it was held that the fact that a company incorporated by an act of the Dominion Parliament chose to confine the exercise of its powers to one Province and to local and provincial objects, did not operate to render its original incorporation illegal as *ultra vires* the Parliament of the Dominion. For other cases defining the powers of the Dominion Parliament see: *Tenant v. Union Bank of Canada*, (1894) A. C. 31; *Citizens Insurance Co. v. Parsons*, (1881), 7 A. C. 96; *Maritime Bank v. Receiver-General*, (1892) A. C. 437; *In re Ontario Power Co.*, (1903), 6 O. L. R. 11; *Bessemer Gas Engine Co. v. Mills*, (1904), 4 O. W. R. 325; *McDiarmid v. Hughes*, (1888), 16 O. R. 570.

##### *Interpretation.*

**Definitions.** 3. In this Part, and in all letters patent and supplementary letters patent issued under it, unless the context otherwise requires: a) "The company" or "a company" means any company to which this Part applies; b) "The under-

<sup>1)</sup> As in force 1st January, 1912. — <sup>2)</sup> The references in the notes are to the Dominion Acts indicated, and (Imp.) to the Imperial *Companies (Consolidation) Act, 1908*, (8 Edw. 7, c. 69).



taking" means the business of every kind which the company is authorized to carry on; c) "Real estate" or "land" includes messuages, lands, tenements, and hereditaments of any tenure, and all immoveable property of any kind; d) "Shareholder" means every subscriber to or holder of stock in the company, and includes the personal representatives of the shareholder; e) "Manager" includes the cashier and his secretary; f) "Court" means in Ontario, the High Court of Justice; in Quebec, the Superior Court in and for that Province; in Nova Scotia, New Brunswick, British Columbia and Prince Edward Island, the Supreme Court in and for each of those Provinces, respectively; in Manitoba, the Court of King's Bench for Manitoba; in the Provinces of Saskatchewan and Alberta, a Superior Court, and in the Yukon Territory, the Territorial Court; and g) "Judge" means in the said respective Provinces and Territory a Judge of the said Courts respectively.

2 Edw. 7, c. 15, §§ 3, 53, 79; Imp. § 285. For cases defining "shareholders," see note to Dominion Winding-up Act, §§ 2, 51.

#### *Preliminaries.*

**Are directory only. 4.** The provisions of this Part relating to matters preliminary to the issue of the letters patent or supplementary letters patent shall be deemed directory only, and no letters patent or supplementary letters patent issued under this Part shall be held void or voidable on account of any irregularity in respect of any matter preliminary to the issue of the letters patent or supplementary letters patent.

2 Edw. 7, c. 15, § 4. A shareholder cannot avoid his liability as a contributory by setting up defects and irregularities in the organization of the company, which can only be taken advantage of at the instance of the Attorney-General.—Common v. McArthur, (1898), 29 S. C. R. 231. See also cases cited Dominion Winding-up Act, § 51, *infra*. Cp. Quebec, etc., Railway v. Dawson, (1851), 1 L. C. R. 366, where it was held that a shareholder, in an action brought by the company, might plead a non-compliance with its act of incorporation, and that by reason of such non-compliance the company was not legally organized. And see Page v. Austin, (1882), 10 S. C. R. 133, holding that where a statutory liability is attempted to be imposed on a party which can only attach to an actual legal shareholder, he is not estopped, by reason of having received a transfer of a certificate of stock, from questioning the legality of the issue of such stock.

#### *Formation of new companies.*

**Companies incorporated for certain purposes. Exceptions. No power to issue paper money or for banking. 5.** The Secretary of State may, by letters patent under his seal of office, grant a charter to any number of persons, not less than five, who apply therefor, constituting such persons, and others who have become subscribers to the memorandum of agreement hereinafter mentioned and who thereafter become shareholders in the company thereby created, a body corporate and politic, for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, except the construction and working of railways or of telegraph or telephone lines, the business of insurance, the business of a loan company and the business of banking and the issue of paper money. 2. Nothing in this Part shall be construed to authorize any company to issue any note payable to the bearer thereof or any promissory note intended to be circulated as money or as the note of a bank or to engage in the business of banking or insurance.

2 Edw. 7, c. 15, §§ 5, 24; Imp. § 2.

**Seal. 6.** The Governor in Council may, from time to time, designate the seal of office to be used by the Secretary of State as the seal under which letters patent may be granted under this Act.

2 Edw. 7, c. 15, § 5.

**Application; what to be stated. 7.** The applicants for such letters patent, who must be of the full age of twenty-one years, shall file in the Department of the Secretary of State an application setting forth the following particulars: a) The proposed corporate name of the company, which shall not be that of any other known company, incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise, on public grounds, objectionable; b) The purposes for which its incorporation is sought; c) The place within Canada which is to be its chief place of business; d) The proposed amount of its capital stock; e) The number of shares and the amount of each share; f) The names in full and the address and calling of each of the applicants, with special mention of the names of not more than fifteen and not less than three of their number, who are to be the first or provisional directors of the company; g) The amount of stock taken by each

applicant, the amount, if any, paid in upon the stock of each applicant, and the manner in which the same has been paid, and is held for the company.

2 Edw. 7, c. 15, § 6; Imp. §§ 3—5.

**Form of application.** 8. The application shall be in accordance with form A in the Schedule to this Act and may ask to have embodied in the letters patent then applied for, any provision which could under this Part be contained in any by-law of the company or of the directors approved by a vote of shareholders, which provision so embodied shall not, unless power is given therefor in the letters patent, be subject to repeal or alteration by any by-law.

2 Edw. 7, c. 15, § 7.

**Memorandum of agreement.** 9. The application shall be accompanied by a memorandum of agreement in duplicate under seal which shall be in accordance with form B in the Schedule to this Act.

2 Edw. 7, c. 15, § 7.

**Condition precedent to issuing of letters patent to be established.** 10. Before the letters patent are issued the applicants shall establish to the satisfaction of the Secretary of State the sufficiency of their application and memorandum of agreement and the truth and sufficiency of the facts therein set forth, and that the proposed name is not the name of any other known incorporated or unincorporated company or one likely to be confounded with any such name; and for that purpose the Secretary of State shall take any requisite evidence in writing by oath or affirmation or by solemn declaration and shall keep of record any such evidence so taken.

2 Edw. 7, c. 15, § 7.

**Averments to be recited.** 11. The letters patent shall recite such of the established averments in the application and memorandum of agreement as to the Secretary of State seems expedient.

2 Edw. 7, c. 15, § 8.

**Name of company.** 12. The Secretary of State may give to the company a corporate name, different from that proposed by the applicants if the proposed name is objectionable.

2 Edw. 7, c. 15, § 9; Imp. § 8.

**Notice to be published. Further publication.** 13. Notice of the granting of the letters patent shall be forthwith given by the Secretary of State by two insertions in the *Canada Gazette*, in the form C in the Schedule to this Act; and thereupon, from the date of the letters patent, the persons therein named, and such persons as shall have become subscribers to the memorandum of agreement or who thereafter become shareholders in the company, and their successors shall be a body corporate and politic, by the name mentioned in the letters patent. 2. A copy of every such notice shall forthwith be, by the company to which such notice relates, inserted on four separate occasions in at least one newspaper in the county, city, or place where the head office or chief agency of the company is established.

2 Edw. 7, c. 15, § 10.

#### *As to existing companies.*

**Existing companies may be incorporated. Effect of letters patent. Names of shareholders. Effect of letters patent.** 14. Any company heretofore incorporated for any purpose or object for which letters patent may be issued under this Part, whether under a special or a general Act, and now being a subsisting and valid corporation, may apply for letters patent to carry on its business under this Part, and the Secretary of State, with the approval of the Governor in Council, may direct the issue of letters patent incorporating the shareholders of the said company as a company under this Part. 2. Upon the issuing of such letters patent all the rights, property, and obligations of the former company shall be and become transferred to the new company, and all proceedings may be continued or commenced by or against the new company that might have been continued or commenced by or against the old company. 3. It shall not be necessary in any such letters patent to set out the names of the shareholders. 4. After the issue of such letters patent the company, shall be governed in all respects by the provisions of this Part, except that the liability of the shareholders to creditors of the old company shall remain as at the time of the issue of the letters patent.

2 Edw. 7, c. 15, § 11; Imp. § 249.

**Scope of letters patent.** 15. If a subsisting company applies for the issue of letters patent under this Part, the Secretary of State may, by the letters patent,



extend the powers of the company to such other objects for which letters patent may be issued under this Part as the applicant desires, and as the Secretary of State thinks fit to include in the letters patent.

2 Edw. 7, c. 15, § 12; Imp. § 249.

**First directors.** 16. The Secretary of State may in any letters patent issued under this Part to any subsisting company name the first directors of the new company, and the letters patent may be issued to the new company by the name of the old company or by another name.

2 Edw. 7, c. 15, § 12.

**Existing companies incorporated by Act may be incorporated under this Part. Proceedings continued. Name of shareholders. Effect of letters patent.** 17. Any company incorporated under any general or special Act of any of the Provinces of Canada, and any company duly incorporated under the laws of the United Kingdom or of any foreign country for any of the purposes or objects for which letters patent may be issued under this Part, and being at the time of the application a subsisting and valid corporation, may apply for letters patent under this Part, and the Secretary of State, upon receiving satisfactory evidence that the Act of incorporation or charter of the company so applying is valid and subsisting and that no public or private interest will be prejudiced, may issue letters patent incorporating the shareholders of the company so applying as a company under this Part, limiting, if necessary, the powers of the said company to such purposes or objects as might have been granted had the shareholders applied in the first instance to the Secretary of State for letters patent under this Part, and thereupon all the rights, property, and obligations of the former company shall be and become transferred to the new company, and all proceedings may be continued or commenced by or against the new company that might have been continued or commenced by or against the old company. 2. It shall not be necessary in any such letters patent to set out the names of the shareholders. 3. After the issue of such letters patent the company shall be governed in all respects by the provisions of this Part, except that the liability of the shareholders to creditors of the old company shall remain as at the time of the issue of the letters patent.

2 Edw. 7, c. 15, § 13; Imp. § 249.

**Proceedings for incorporation of chartered companies.** 18. Every company desirous of obtaining letters patent under the last preceding section shall first file in the office of the Secretary of State of Canada a certified copy of the charter or Act incorporating the company, and shall also designate the place in Canada where its principal office will be situated and the name of the agent or manager in Canada authorized to represent the company and to accept process in all suits and proceedings against the company for any liabilities incurred by the company therein.

2 Edw. 7, c. 15, § 13; Imp. § 249.

**Return to Minister.** 19. Every such company to which such letters patent have been granted, when so required, shall make a return to the Secretary of State of the names of its shareholders, the amount of its paid-up capital, and the value of its real and personal estate held in Canada, and, in default of making the said return within three months, the letters patent may be cancelled.

2 Edw. 7, c. 15, § 13.

**Publication of notice.** 20. Notice of the issue of such letters patent shall be published in the *Canada Gazette*.

2 Edw. 7, c. 15, § 13.

#### *Change of name.*

**Minister may change name by supplementary letters.** 21. If it is made to appear to the satisfaction of the Secretary of State that the name of a company, given by original or supplementary letters patent issued under this Part, is the same as the name of an existing incorporated or unincorporated company, or so similar thereto as to be liable to be confounded therewith, the Secretary of State may direct the issue of supplementary letters patent, reciting the former letters and changing the name of the company to some other name which shall be set forth in the supplementary letters patent.

2 Edw. 7, c. 15, § 14; Imp. § 8.

**Company may obtain change of name.** 22. When a company is desirous of adopting another name, the Secretary of State, upon being satisfied that the change desired is not for any improper purpose, may direct the issue of supplementary

letters patent, reciting the former letters patent and changing the name of the company to some other name, which shall be set forth in the supplementary letters patent.

2 Edw. 7, c. 15, § 15.

**Change not to affect rights or obligations.** 23. No alteration of name under the two sections last preceding shall affect the rights or obligations of the company; and all proceedings may be continued or commenced by or against the company under its new name that might have been continued or commenced by or against the company under its former name.

2 Edw. 7, c. 15, § 16; Imp. § 8 (5).

#### *Fees and forms.*

**Tariff by Governor in Council. Must be paid before letters issued.** 24. The Governor in Council may, from time to time, establish, alter, and regulate the tariff of the fees to be paid on application for any letters patent or supplementary letters patent under this Part, the amount of which may be varied according to the nature of the company, the amount of the capital stock or other particulars as the Governor in Council thinks fit. 2. No steps shall be taken in the Department of the Secretary of State towards the issue of any letters patent or supplementary letters patent under this Part, until after all fees therefor are duly paid.

2 Edw. 7, c. 15, §§ 13, 17; Imp. § 237.

**Forms to be prescribed by Governor in Council.** 25. The Governor in Council may prescribe the forms of proceedings and registration in respect to letters patent and supplementary letters patent issued under this Part, and in respect to all other matters requisite for carrying out the objects of this Part.

2 Edw. 7, c. 15, § 17; Imp. § 118.

#### *Commencement of business.*

**Ten per cent of capital to be paid.** 26. The company shall not commence its operations or incur any liability before ten per centum of its authorized capital has been subscribed and paid for.

2 Edw. 7, c. 15, § 18; Imp. §§ 16, 87. Where a company's charter provided that the company should not commence operations until 50% of its capital stock was subscribed, and 25% of such subscription paid up, it was held, that the words "commence operations" were not intended to prevent calls being made on the stock subscribed for, nor to prevent the provisional directors from acting in the name of the company, so long as their acts fell short of what might be properly termed commencing operations.

#### *Forfeiture of charter.*

**Forfeiture of charter for non-user.** 27. In case of non-user by the company of its charter for three consecutive years or in case the company does not go into actual operation within three years after the charter is granted, such charter shall be and become forfeited.

2 Edw. 7, c. 15, § 19; Imp. § 242. In *Brooke v. Bank of Upper Canada*, (1867), 4 O. P. R. 162, it was held that a forfeiture of the charter did not operate as a total dissolution of the bank; that the bank was still a corporate body liable to have its property administered for satisfaction of its debts and that some "formal" process" was necessary finally to determine and put an end to all the functions of the corporation. See also *La Compagnie du Cap Gibraltar v. Lalonde*, (1889), M. L. R. 5 S. C. 127.

#### *General powers and duties of the company.*

**Powers given subject to this Act.** 28. All powers given to the company by letters patent or supplementary letters patent shall be exercised subject to the provisions and restrictions contained in this Part.

2 Edw. 7, c. 15, § 20.

**As to real estate. Loans. Property and power vested by incorporation.** 29. The company may acquire, hold, mortgage, sell, and convey any real estate requisite for the carrying on of the undertaking of the company. 2. The company shall in no case make any loan to any shareholder of the company. 3. The company shall forthwith upon incorporation under this Part, become and be vested with all property and rights, real and personal, theretofore held by it or for it under any trust created with a view to its incorporation, and with all the powers, privileges, and immunities, requisite or incidental to the carrying on of its undertaking, as if it was incorporated by a special Act of Parliament, embodying the provisions of this Part and of the letters patent and supplementary letters patent issued to such company.



2 Edw. 7, c. 15, §§ 21, 70; Imp. § 16 (2). A statutory company has power to mortgage, unless its incapacity to do so is either expressly declared or to be gathered by implication from the terms of the act of incorporation. "In other words no enabling power is requisite to confer the authority to mortgage, but, prima facie, every corporation must be taken to possess it." — Per Strong J., in *Bickford v. Grand Junction Railway Co.*, (1877), 1 S. C. R. 696, at pp. 729 and 730. But a disposal of the entire property of a company so as to prevent the carrying on of the objects for which it was formed, is an *ultra vires* act. — *Montreal Telegraph Co. v. Low*, (1883), 27 L. C. J. at p. 277. In *Farrall v. Carribou, etc., Co.*, (1887), 30 N. S. 199, it was held that a trading company had power to borrow money and mortgage its property, and so long as the terms of the mortgage were not illegal, there could be no objection to paying a bonus for the accommodation obtained. In *Waterous Engine Co. v. Palmerston*, (1892), 21 S. C. R. 556, the Court held that a contract under corporate seal for the purchase of a fire engine which was not authorized by the by-laws and not completed by acceptance, could not be enforced against the company. A corporation is liable on an executed contract for the performance of work within the purpose for which it was incorporated, and of which it had received the benefit, though the contract was not executed under its corporate seal. — *Adams & Burns v. Bank of Montreal*, (1901), 32 S. C. R. 719. In *Neelon v. Thorold*, (1893), 22 S. C. R. 390, a company which had received a loan of money from a shareholder was estopped from setting up the defence that the loan was unauthorized; but see *McArthur v. Portage la Prairie*, (1894), 9 Man. R. 588. Where directors had bought goods on the credit of the company, which by the act of incorporation the company had no power to purchase, they were held not liable on a warranty of authority. — *Struthers v. MacKenzie*, (1897), 28 O. R. 381. A parol agreement entered into by the "duly authorized agents" of an insurance company to refer questions of the company's liability to arbitration is not binding on the company, since it is not a contract relating to the purposes for which the company was incorporated. — *Calvin v. Provincial Insurance Co.*, (1870), 20 U. C. C. P. 267. If a company enters into an *ultra vires* transaction, and in the course of litigation a judgment is entered by consent, such judgment is as binding upon the parties as one obtained after a contest, and will not be set aside because the transaction was beyond the scope of the company's powers. — *Charlebois v. Delap*, (1896), 26 S. C. R. 221. The Legislature may give a local corporation authority to borrow money at any rate of interest already legalized as to other persons having the right of borrow. — *Royal Canadian Insurance Co. v. Montreal Warehousing Co.*, (1880), 3 L. N. 155. Where the bonds of a company provided for the payment of interest at the rate of 10%, and, upon default in payment, the trustee, under a mortgage given to secure the bonds, issued a declaration calling in the principal and interest under an acceleration clause in the mortgage, it was held that interest at the rate provided for, and not at the statutory rate, was payable after the date of the declaration. — *Eastern Trust Co. v. Cushing Sulphite Fibre Co.*, (1907), 3 N. B. Eq. 392; 2 E. L. R. 93. It is *ultra vires* the powers of a tug company incorporated under this Act for the purpose of carrying on a general carrying and salvage business to guarantee payment of a boiler purchased by the owner of a tug, who was employed by the company, where the boiler was to be used by him to operate the tug. — *William's Machinery Co. v. The Crawford Co.*, (1908), 16 O. L. R. 245. But a guarantee of bonds issued by a company for the price of an elevator, given by a railway company to which the elevator is leased, and amounting in effect to an undertaking to pay the rent of the elevator to the trustee of the bond holders, is valid and binding, and may be enforced against such railway company. — *Royal Trust Co. v. Great Northern Railway Co.*, (1906), Q. R. 35 S. C. 494. A company is liable for torts committed by its employees to the same extent as principals are liable for the torts of their servants. — *Harris v. Brunette Saw-mill Co.*, (1893), 3 B. C. 172. — Under Criminal Code, (R. S. C. c. 146), § 241 a corporation may be indicted for omitting, without lawful excuse, to perform the duties of avoiding danger to human life from anything in its charge or under its control. — *Union Colliery Co. v. The Queen*, (1900), 31 S. C. R. 81. A Justice of the Peace cannot compel a company to appear before him; nor can he bind a company over to appear and answer an indictment. — *In re Chapman v. City of London*, (1890), 19 O. R. 33. The Court has no power to interfere with the internal management of the company. Thus, it has no power to declare a dividend to be paid, or to regulate the mode of investing the profits of the company. — *Burland v. Earle*, (1902) A. C. 83; reversing *Earle v. Burland*, (1899), 27 O. A. R. 540.

**Offices, agencies, domicile. Notice. 30.** The company shall, at all times, have an office in the city or town in which its chief place of business in Canada is situate, which shall be the legal domicile of the company in Canada; and the company may establish such other offices and agencies elsewhere as it deems expedient. 2. Notice of the situation of such principal office and of any change therein shall be published in the *Canada Gazette*.

2 Edw. 7, c. 15, § 22; Imp. § 62.

**Acts of attorney binding. 31.** Every deed which any person, lawfully empowered in that behalf by the company as its attorney, signs on behalf of the company and seals with his seal, shall be binding on the company and shall have the same effect as if it was under the seal of the company.

2 Edw. 7, c. 15, § 23; Imp. § 78.

**Contracts of agent binding on company. Cases where seal not necessary. No individual liability. 32.** Every contract, agreement, engagement or bargain made,

and every bill of exchange drawn, accepted, or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the company, by any agent, officer, or servant of the company, in general accordance with his powers as such under the by-laws of the company, shall be binding upon the company. 2. In no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note, or cheque, or to prove that the same was made, drawn, accepted, or endorsed, as the case may be, in pursuance of any by-law or special vote or order. 3. No person so acting as such agent, officer, or servant of the company shall be thereby subjected individually to any liability whatever to any third person.

2 Edw. 7, c. 15, § 24; Imp. §§ 76, 77. In a suit against the company for wages, where it was shewn that there was no contract under defendant's corporate seal, but that plaintiff was employed by the manager of the company with the knowledge of three directors, the company was held liable. — *Milue v. Ontario Marble Quarries*, (1909), 13 O. W. R. 1137. A writing sous seing privé signed by the manager and secretary of a company, without special authorization of the board of directors, is not signed by a competent officer, and is not available as a valid confession of judgment authorizing the defendant's attorney to confess judgment in its behalf. — *Bessette v. Equitable Insurance Co.*, (1907), 10 Q. P. R. 260; see also *National Malleable Castings Co. v. Smiths Falls, etc., Co.*, (1907), 14 O. L. R. 22; 7 O. W. R. 436. In *Paquet v. Mitabetchonam Pulp Co.*, (1907), Q. R. 29 S. C. 535, it was held that the secretary of a company having been authorized by resolution to sign notes in settlement of undisputed accounts due, could validly sign a note for a debt in respect of which he had been by special resolution directed to "make arrangements" with the creditor, and the company could not in an action on the note deny his authority to do so. In *Vulcan Iron Works v. Leary*, (1905), 1 West. L. R. 453, the manager of a company to be formed was held liable for goods purchased for the use of the company but charged to him personally. "Under these sections contracts made by agents, officers, or servants of the company in general accordance with their powers are binding on the company, and this provision will be construed broadly and a reasonable latitude allowed in ascertaining the agent's authority." — *Masten, Company Law*, p. 235, citing *Taylor v. Cobourg, etc., Co.*, (1874), 24 U. C. C. P. 200; *Thompson v. Brantford, etc., Co.*, (1898), 25 O. P. R. 340; *Clarke v. Union Fire Insurance Co.*, (1884), 10 O. P. R. 339.

Name with word "limited" required to be used in certain ways. 33. The company shall keep its name, with the word "limited" after the name, painted or affixed, in letters easily legible, in a conspicuous position on the outside of every office or place in which the business of the company is carried on, and shall have its name, with the said word after it, engraven in legible characters, on its seal, and shall have its name, with the said word after it in legible characters, mentioned in all notices, advertisements, and other official publications of the company and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, and receipts of the company.

2 Edw. 7, c. 15, § 25; Imp. §§ 3, 4, 63. For penalty for violation of this section, see §§ 114 and 115, *infra*.

#### *Obtaining of further powers.*

Company may authorize directors to apply for extension of powers. 34. The company may, from time to time, by a resolution passed by the votes of shareholders representing at least two-thirds in value of the subscribed stock of the company, at a special general meeting called for the purpose, authorize the directors to apply for supplementary letters patent, extending the powers of the company to such further or other purposes or objects for which a company may be incorporated under this Part, as are defined in such resolution.

2 Edw. 7, c. 15, § 26; Imp. § 9.

Application by directors. 35. The directors may, at any time within six months after the passing of any such resolution, make application to the Secretary of State, for the issue of such supplementary letters patent.

2 Edw. 7, c. 15, § 27; Imp. § 9.

Evidence of resolution. 36. Before such supplementary letters patent are issued, the applicants shall establish to the satisfaction of the Secretary of State the due passing of the resolution authorizing the application, and for that purpose the Secretary of State shall take any requisite evidence in writing, by oath or affirmation, or by statutory declaration under the *Canada Evidence Act*, and shall keep of record any such evidence so taken.

2 Edw. 7, c. 15, § 28; Imp. § 9.



**Supplementary letters patent granted. Notice of issue. Effect of letters. Publication of notice.** 37. Upon the due passing of such resolution being so established, the Secretary of State may grant supplementary letters patent extending the powers of the company to all or any of the objects defined in the resolution; and notice thereof shall be forthwith given by the Secretary of State in the *Canada Gazette*, in the form D in the Schedule to this Act. 2. From the date of the supplementary letters patent, the undertaking of the company shall extend to and include the further or other purposes or objects set out in the supplementary letters patent as fully as if such further or other purposes or objects were mentioned in the original letters patent. 3. A copy of every such notice shall forthwith be, by the company to which the notice relates, inserted on four separate occasions in at least one newspaper in the county, city, or place where the head office or chief agency is established.

2 Edw. 7, c. 15, § 29; Imp. § 9.

### *Liability of shareholders.*

**Limited to amount unpaid on stock.** 38. The shareholders of the company shall not, as such, be responsible for any act, default, or liability of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing relating to or connected with the company, beyond the amount unpaid on their respective shares in the capital stock thereof.

2 Edw. 7, c. 15, § 30; Imp. § 123. See notes § 39, *infra*. Where four parties described not in their own names but as a collective body, which was not shewn to be corporate, signed and sealed a deed with their own names and seals, they were held to be individually bound. — *Cullen v. Nickerson*, (1861), 10 U. C. C. P. 549. In case of a nominal corporation which has no legal status as such, the ostensible corporators are partners and their liability as partners on contracts of the company is joint and not joint and several. — *Gildersleeve v. Balfour*, (1893), 15 O. P. R. 293.

**Liability of shareholders. Action when. Amount recoverable. Application.** 39. Every shareholder, until the whole amount of his shares has been paid up, shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon; but he shall not be liable to an action therefor by any creditor until an execution at the suit of such creditor against the company has been returned unsatisfied in whole or in part. 2. The amount due on such execution, not exceeding the amount unpaid on his shares, as aforesaid, shall be the amount recoverable, with costs, from such shareholder. 3. Any amount so recoverable, if paid by the shareholder, shall be considered as paid on his shares.

2 Edw. 7, c. 15, § 31; Imp. § 123. A contract between the company and a person who makes application for shares must be dealt with as ordinary contracts; there must be an offer by one to take shares and an acceptance of such offer by the company. — *In re Bolt & Iron Co., Hovenden's Case*, (1884), 10 O. P. R. 434. Therefore a subscription obtained by fraud or misrepresentation is voidable. — *Provincial Insurance Co. v. Brown*, (1860), 9 U. C. C. P. 286. An offer under seal to take shares in a company, the deed being delivered to the agent of the company, is not revocable as a parol offer would be. Where the subscription was conditioned upon the company's selling a certain amount of stock, and such amount was not sold, the subscriber was released from his liability as a shareholder. — *Ontario Ladies College v. Kendry*, (1905), 10 O. L. R. 324. But where the agreement of the company is merely collateral, the shareholder is liable on his shares, and must resort to his right of action for damages for breach of such agreement. — *Clarke v. Union Fire Insurance Co., Caston's Case*, (1884), 10 O. P. R. 339; see also *Kingston Street Railway v. Foster*, (1879), 44 U. C. Q. B. 552. In the following cases in which defendant was sought to be charged with the statutory liability of a shareholder under this section, the question at issue was whether or not defendant had entered into a valid contract of membership. The liability sought to be imposed in these cases was one accruing while the company was solvent and should be distinguished from the liability which arises under a winding-up proceeding. See *Dominion Winding-up Act*, § 51, and notes, *infra*. *Smart v. Bowmanville Machine Co.* (1875), 25 U. C. C. P. 503, (estoppel to deny ownership of shares); *Long v. Guelph Lumber Co.*, (1880), 31 U. C. C. P. 129, (condition of subscription ultra vires); *Nasmith v. Manning*, (1880), 5 O. A. R. 126, (proof of allotment of shares); *National Insurance Co. v. Egleson*, (1881), 29 Gr. 406, (allotment of shares); *Coté v. Stadacona Insurance Co.*, (1881), 6 S. C. R. 193, (acquiescence by receipt of dividend); *Page v. Austin*, (1882), 10 S. C. R. 132, (shareholder not estopped from questioning legality of issue); *Beatty v. Neelon*, (1886), 13 S. C. R. 1, (misrepresentation by promoters: delay in bringing action); *Magog Textile Co. v. Price*, (1887), 14 S. C. R. 664, (subscription before incorporation; no allotment); *Halifax Carrette Co. v. Moir*, (1895), 28 N. S. 45, (sufficiency of acceptance by the company); *North Sydney Mining, etc., Co. v. Greener*, (1898), 31 N. S. 41, (conditional subscription); *Cazelais v. Picotte*, (1900), Q. R. 18 S. C. 538, (conditional subscription); *Ottawa Dairy Co. v. Sorley*, (1904), 34 S. C. R. 508, (alleged payment for stock on goodwill); *Sourlay v. Chandler*, (1906), 1 East. L. R. 433, (rescission of agreement to take shares;

misrepresentation; laches); *Farrell v. Portland Rolling Mills Co.*, (1908), 38 N. B. 364, (delay in rescission of contract for shares induced by fraud); *Anglo-American Lumber Co. v. McLellan*, (1908), 14 B. C. 93; 9 West. L. R. 469, (conditional subscription; no allotment); *Farmers' Bank v. Lunstrum*, (1909), 14 O. W. R. 288, (attempted withdrawal of application). The holder of shares which had been issued illegally below par is liable for calls for the unpaid balances of them at par value. — *Northwest Electric Co. v. Walsh*, (1898), 29 S. C. R. 33. In *McKenzie v. Kittridge*, (1879), 4 S. C. R. 336, it was held that, under §§ 33, 34 and 35 of c. 63 Cons. St. Can., payment in full for shares and registration of a certificate to that effect, releases the shareholder from all liability for the debts of the company, except debts due to employees. The above cases have been superseded by the provisions of this Act. A person purchasing shares in good faith without notice from the original shareholder, as fully paid up, is not liable to an execution creditor of the company, whose execution has been returned nulla bona for the amount unpaid upon the shares. — *McCracken v. MacIntyre*, (1877), 1 S. C. R. 479. A mortgagee, who takes a transfer of shares absolute in form and entered on the books of the company as an absolute transfer, may show the real nature of the transaction. — *Page v. Austin*, (1882), 10 S. C. R. 132. Shares in a company may be paid for in property and if so paid for they must be treated as fully paid up. — In re *Hess Manufacturing Co.*, *Edgar v. Sloan*, (1894), 23 S. C. R. 644. Stock may also be paid for in goodwill of a business taken over by the company. — *Ottawa Dairy Co. v. Sorley*, (1904), 34 S. C. R. 508. But where subscribers agreed to pay a part of the price of the shares in cash, the balance to be paid in future services, it was held, in the winding-up proceedings, that as there was no agreement in writing for payment of the differences in services instead of cash, that the shareholders were liable to the liquidator for the balance of the purchase price of the shares. Disorganization of the company does not discharge the shareholder from the obligation to pay balances on shares. The rights of creditors against shareholders are still preserved, — *Hughes v. La Compagnie du Cap Gibraltar*, (1889), M. L. R. 5 S. C. 129.

**Set-off against creditor's action.** 40. Any shareholder may plead by way of defence in whole or in part to any action by any creditor under the last preceding section any set-off which he can set up against the company, except a claim for unpaid dividends, or a salary or allowance as a president or a director of the company.

2 Edw. 7, c. 15, § 31; Imp. § 123.

**Trustees not personally liable. Estate liable. Holder of stock as collateral security.** 41. No person, holding stock in the company as an executor, administrator, tutor, curator, guardian, or trustee of or for any person named in the books of the company as being so represented by him, shall be personally subject to liability as a shareholder; but the estate and funds in the hands of such person shall be liable in like manner, and to the same extent, as the testator or intestate would be if living, or the minor, ward, or interdicted person, or the person interested in such trust fund would be, if competent to act and holding such stock in his own name. 2. No person holding such stock as collateral security shall be personally subject to such liability, but the person pledging such stock shall be considered for the purposes of such liability as holding the same and shall be liable as a shareholder accordingly.

2 Edw. 7, c. 15, § 32; Imp. § 126.

**Trustees represent stock and pledgor.** 42. Every such executor, administrator, curator, guardian, or trustee shall represent the stock held by him, at all meetings of the company, and may vote as a shareholder; and every person who pledges his stock may represent the same at all such meetings and, notwithstanding such pledge, vote as a shareholder.

2 Edw. 7, c. 15, § 33; Imp. § 126.

### *Prospectus.*

**Prospectus must specify contracts entered into by company, or promoters. Unless specified prospectus fraudulent.** 43. Every prospectus of the company, and every notice inviting persons to subscribe for shares in the company, shall specify the date of and names of the parties to any contract entered into by the company or the promoters, directors, or trustees thereof before the issue of such prospectus or notice, whether subject to adoption by the directors or the company or otherwise. 2. Every prospectus or notice which does not specify such date and names shall, with respect to any person who takes shares in the company on the faith of such prospectus or notice without notice of such contract, be deemed fraudulent on the part of the officers of the company who knowingly issue such prospectus or notice.

2 Edw. 7, c. 15, § 34; Imp. §§ 80—84. Where after a prospectus for the sale of shares in a company has been issued, a mortgage was made to secure an indebtedness existing at the time of the issue of the prospectus the failure to communicate the existence of the mortgage to the purchaser was not such a concealment or misrepresentation as would entitle him to rescind. —



*Petrie v. Guelph Lumber Co.*, (1886), 11 S. C. R. 450. For an example of a misrepresentation which will entitle a purchaser of shares to rescind, see *Temperance Colonization Co. v. Fairfield*, (1885), 16 O. R. 544. A purchaser of shares must act promptly upon discovering the misrepresentation; a short delay has been held sufficient to deprive him of his right to rescind. — *Petrie v. Guelph Lumber Co.*, *supra*; *Farrell v. Portland Rolling Mills Co.*, (1907), 3 N. B. Eq. 508. But see *Farrell v. Manchester*, (1908), 40 S. C. R. 339, where a delay of nearly a year was held not a bar in a suit for rescission. The fact that plaintiff has sold a part of his shares will not preclude him from obtaining rescission as to the remainder. — *Nelles v. Ontario Investment Association*, (1889), 17 O. R. 129. As to when the right to rescind for misrepresentation will be waived, see *Bank of Hamilton v. Johnston*, (1908), 11 O. W. R. 111; *McCallan v. Sun Savings & Loan Co.*, (1902), 1 O. W. R. 226. Where an agent of a company by false representations induced a purchaser to buy shares belonging to a director, the directors were held responsible for the fraud practised on the purchaser, and in an action against the purchaser on a note given for the shares, defendant was held not liable. — *Goold v. Gillies*, (1908), 40 S. C. R. 437. But see *Farrell v. Portland Rolling Mills Co.*, (1908), 38 N. B. 364, where it was held, upon the facts of the case, that the directors were not liable for misrepresentations in a prospectus issued by a broker to a holder of shares who purchased relying on the prospectus, it having been issued by the broker without their authority; see also *Gourlee v. Chandler*, (1908), 41 N. S. 341. In *Kennedy v. Acadia Pulp & Paper Mills Co.*, (1906), 38 N. S. 291, where it appeared that the directors had employed competent managers upon whom they were depending for information, it was held that they were not responsible for representations which were not discovered to be mistaken until some time after the prospectus had been issued. Shareholders in a company cannot bring an action as individuals against promoters for damages caused by illegal misrepresentations by the latter in the prospectus of the company, the injury, if any, being an injury to the company and not to the shareholders. — *Beatty v. Neelon*, (1886), 13 S. C. R. 1. Where the undertaking for which the company was incorporated had not been proceeded within the time announced in the prospectus, it was held that defendant could not be held bound by his subscription to take shares. — *Patterson v. Turner*, (1902), 3 O. L. R. 373.

#### *Holding stock of other companies.*

#### **Conditions on which company may purchase stock of other companies. Proviso.**

44. The company shall not under any circumstances use any of its funds in the purchase of stock in any other corporation, unless nor until the directors have been expressly authorized by a by-law passed by them for the purpose and sanctioned by a vote of not less than two-thirds in value of the capital stock represented at a general meeting of the company duly called for considering the subject of the by-law: Provided that if the letters patent authorize such purchase it shall not be necessary to pass such by-law.

2 Edw. 7, c. 15, § 35.

#### *Capital stock.*

**Stock to be personal estate.** 45. The stock of the company shall be personal estate, and shall be transferable, in such manner and subject to all such conditions and restrictions as are prescribed by this Part or by the letters patent or by the by-laws of the company.

2 Edw. 7, c. 15, § 36; Imp. § 22. Stock in a building society may be taken in execution. — *Robinson v. Grange*, (1859), 18 U. C. Q. B. 260. Shares may be seized and sold under execution though no certificate may have been issued. — *European, etc., Railway Co. v. McLeod*, (1875), 16 N. B. 3. Shares, while registered in the books of the company in the name of the judgment debtor, are liable to execution as being his property, and do not pass to his trustees under a deed of assignment to them. — *Brock v. Ruttan*, (1869), 1 U. C. C. P. 218. Stock in a company is only bound from the time when the notice of the writ is given to the company by the sheriff, and not from the time of the delivery of the writ to the sheriff. — *Hatch v. Rousland*, (1889), 5 O. P. R. 223. Where stock has been transferred, and the transferee registered in the books of the company, such stock cannot be seized under an execution against the transferor, even though there has been no formal acceptance by the transferee. — *Woodruff v. Harris*, (1883), 11 U. C. Q. B. 490. A bona fide assignment or pledge, for value, of shares is valid as between the assignor and assignee, notwithstanding that no entry of the transfer has been made in the books of the company; and after such assignment the shares cannot be seized under an execution against the assignor. — *Morton v. Cowan*, (1894), 25 O. R. 529.

**Allotment of stock.** 46. In so far as the stock of the company or any increased amount thereof is not allotted by the letters patent or the supplementary letters patent and when no other definite provision is made by such letters patent or supplementary letters patent such stock shall be allotted at such times and in such manner as the directors by by-law shall prescribe.

2 Edw. 7, c. 15, § 37; Imp. §§ 85, 86.

**Preference stock. Provisions as to control of affairs.** 47. The directors of the company may make by-laws for creating and issuing any part of the capital stock as

preference stock, giving the same such preference and priority, as respects dividends and in any other respect, over ordinary stock as is by such by-laws declared. 2. Such by-laws may provide that the holders of shares of such preference stock shall have the right to select a certain stated proportion of the board of directors, or may give them such other control over the affairs of the company as is considered expedient.

2 Edw. 7, c. 15, § 38; Imp. Sched. I. See Ontario Companies Act, §§ 73—75, *infra*, and cases cited in notes.

**By-law to be sanctioned.** 48. No such by-law shall have any force or effect whatever until after it has been sanctioned by a vote of three-fourths of the shareholders, present in person or by proxy at a general meeting of the company duly called for considering the same and representing two-thirds of the stock of the company, or until the same shall be unanimously sanctioned in writing by the shareholders of the company.

2 Edw. 7, c. 15, § 38.

**Rights and liabilities of holders of preference stock.** 49. Holders of shares of such preference stock shall be shareholders within the meaning of this Part, and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of this Part: Provided that in respect of dividends, and in any other respect declared by by-law as authorized by this Part, they shall, as against the ordinary shareholders, be entitled to the preferences and rights given by such by-law.

2 Edw. 7, c. 15, § 38.

**Execution of trusts. Receipt of shareholder as a discharge. Application of money.** 50. The company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, in respect of any share. 2. The receipt of the shareholder in whose name the same stands in the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share whether notice of such trust has been given to the company or not. 3. The company shall not be bound to see to the application of the money paid upon such receipt.

2 Edw. 7, c. 15, § 39; Imp. § 27. See notes § 161, *infra*. A bona fide subscription for stock by a person in his own name, but really as trustee and agent for another, who requested such stock to be subscribed for, is valid. — Davidson v. Grange, (1854), 4 Gr. 377. But where the officers and directors of the company are parties to a breach of trust the transaction may be set aside. — Madden v. Dimond, (1905), 12 B. C. 80; Lasell v. Hannah, (1906), 37 S. C. R. 324.

#### *Increase or reduction of capital, etc.*

**By-law to consolidate shares. Purchase of fractions of shares by company. By-law for subdivision of shares.** 51. The directors of the company may, at any time, whenever the par value of the existing shares of the company is less than one hundred dollars each, make a by-law consolidating them into shares of a larger par value; but no such consolidated share shall exceed the par value of one hundred dollars. 2. For the purpose of such consolidation, the company shall have the power to purchase fractions of shares, and shall be bound to sell any shares held from such purchases within two years after the purchase. 3. The directors of the company may also, at any time, make a by-law subdividing the existing shares into shares of a smaller amount.

2 Edw. 7, c. 15, § 40; 4 Edw. 7, c. 5, § 2; Imp. § 41. A shareholder who has received shares, which were a part of an unauthorized issue of capital stock, is not liable to an execution creditor of the company for the unpaid purchase price of such shares. — Page v. Austin, (1882), 10 S. C. R. 132.

**Increase of capital. By-law to increase capital to be approved and confirmed.** 52. The directors of the company may, at any time after ninety per centum of the capital stock of the company has been taken up and fifty per centum thereon paid in, make a by-law for increasing the capital stock of the company to any amount which they consider requisite for the due carrying out of the objects of the company. 2. No by-law for increasing or reducing the capital stock of the company, or for subdividing the shares, shall have any force or effect whatsoever, until it is approved by the votes of shareholders representing at least two-thirds in value of the subscribed stock of the company at a special general meeting of the company duly called for considering the same, and afterwards confirmed by supplementary letters patent.

2 Edw. 7, c. 15, §§ 41, 43; Imp. § 41.



**By-law to allot stock. Directors allot when.** 53. Such by-law shall declare the number of the shares of the new stock, and may prescribe the manner in which the same shall be allotted. 2. In default of the manner of the allotment of the shares of the new stock being prescribed by such by-law, the control of such allotment shall vest absolutely in the directors.

2 Edw. 7, c. 15, § 41.

**Reduction of capital by by-law. Declaration contained in. Liability to creditors not affected.** 54. The directors of the company may, at any time, make a by-law for reducing the capital stock of the company to any amount which they consider advisable and sufficient for the due carrying out of the undertaking of the company. 2. Such by-law shall declare the number and value of the shares of the stock as so reduced, and the allotment thereof, or the manner in which the same shall be made. 3. The liability of the shareholders to persons who were, at the time of the reduction of the capital, creditors of the company, shall remain the same as if the capital had not been reduced.

2 Edw. 7, c. 15, § 42; Imp. §§ 46, 53.

**Supplementary letters to confirm by-law.** 55. At any time, not more than six months after the approval of a by-law for increasing or reducing the capital stock of the company, or for subdividing the shares, the directors may apply to the Secretary of State for the issue of supplementary letters patent to confirm the same.

2 Edw. 7, c. 15, § 44; Imp. § 47.

**Evidence with application. Evidence how taken.** 56. The directors shall, with such application, produce a copy of such by-law, under the seal of the company, and signed by the president or vice-president and the secretary, and establish to the satisfaction of the Secretary of State, the due passage and approval of such by-law and the expediency and bona fide character of the increase or reduction of capital or subdivision of shares, as the case may be, thereby provided for. 2. The Secretary of State shall, for that purpose, take any requisite evidence in writing, by oath or affirmation or by solemn declaration, and shall keep of record any such evidence so taken.

2 Edw. 7, c. 15, § 44.

**Granting of the letters. Notice. Effect of letters. New stock subject to provisions of this Part.** 57. Upon the due passage and approval of such by-law being so established, the Secretary of State may grant such supplementary letters patent. 2. Notice of the granting of such letters patent shall be forthwith given by the Secretary of State in the *Canada Gazette*, in the form E in the Schedule to this Act. 3. From the date of such supplementary letters patent, the capital stock of the company shall be and remain increased or reduced, or the shares subdivided, as the case may be, to the amount in the manner and subject to the conditions set forth by such by-law. 4. The whole of the stock, as so increased or reduced or with such subdivided shares shall become subject to the provisions of this Part, in like manner, as far as possible, as if every part thereof had been or formed part of the stock of the company originally subscribed.

2 Edw. 7, c. 15, § 45; Imp. § 50.

#### *Calls.*

**Calls within the first year. Calls for residue.** 58. Not less than ten per centum upon the allotted shares of stock of the company shall, by means of one or more calls formally made, be called in and made payable within one year from the incorporation of the company. 2. The residue shall be called in and made payable when and as the letters patent, or the provisions of this Part, or the by-laws of the company direct.

2 Edw. 7, c. 15, § 46. Provision as to payment of ten per centum within one year is directory only. — See *Ontario Investment Association v. Sippi*, (1890), 20 O. R. 440, where it was held that an otherwise valid transfer was not invalidated by the fact that the 10% mentioned was not paid. Under ordinary circumstances there is no liability to pay for shares until a call is made and notice thereof given to the shareholders. — In re *Haggert Bros. Manufacturing Co.*, *Peaker & Runion's Case*, (1892), 19 O. A. R. 582. In *Harris v. Dry Dock Co.*, (1869), 7 Gr. 450, a shareholder, who was also a judgment creditor of the company, was granted a decree compelling the directors to make calls.

**Call when demand made.** 59. A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

2 Edw. 7, c. 15, § 47. Where shareholders have confirmed a by-law making calls, they are estopped from objecting that such calls were improperly made. — *Christopher v. Noxon*, (1884),

4 O. R. 672. If calls are made by directors in such a way as to discriminate between one set of shareholders and another, the Court may interfere to protect those who are prejudiced. — *Christopher v. Noxon, supra*; *European, etc., Railway Co., v. McLeod*, (1875), 16 N. B. 3. Notice of calls is deemed to have been given at the time of mailing, and not at the time when such notice reaches its destination. — *Union Fire Insurance Co. v. Fitzsimmons*, (1882), 32 U. C. C. P. 602; see also *Union Fire Insurance Co. v. O'gara*, (1883), 4 O. R. 359; *Ross v. Converse*, (1883), 27 L. C. J. 143; *Bank of Liverpool v. Bigelow*, (1878), 12 N. S. 236. But where the charter provided that one month's notice "shall be given," it was held that the mere posting of such notice was not a compliance with this provision. — *Ross v. Machar*, (1885), 8 O. R. 417. A shareholder is not estopped from disputing the legality of a call unauthorized by resolution. — *London Gas Co. v. Campbell*, (1856), 14 U. C. Q. B. 143.

**Interest on calls. 60.** If a shareholder fails to pay any call due by him, on or before the day appointed for the payment thereof, he shall be liable to pay interest for the same, at the rate of six per centum per annum from the day appointed for payment to the time of actual payment thereof.

2 Edw. 7, c. 15, § 47. In *St. Stephen Branch Railway Co. v. Black*, (1870), 13 N. B. 139, it was held that the company could take and recover on a promissory note given by a shareholder in payment for assessment due on his shares. When a company falls into a complete state of disorganization, while its corporate existence is extinguished, it preserves its legal existence. Nevertheless it cannot bring suit for call without being properly authorized. — *La Compagnie du Cap Gibraltar v. La Londe*, (1889), M. L. R. 5 S. C. 127.

**Payment in advance on shares. Interest may be allowed. 61.** The directors may, if they think fit, receive from any shareholder willing to advance the same, beyond the sums then actually called for, all or any part of the amounts remaining unpaid on the shares held by such shareholders. 2. Upon the money, so paid in advance, or so much thereof, as, from time to time, exceeds the amount of the calls then made upon the shares in respect of which such advance is made, the company may pay interest at such rate not exceeding eight per centum per annum, as the shareholder who pays such sum in advance and the directors agree upon.

2 Edw. 7, c. 15, § 48.

**Forfeiture of shares for non-payment of calls. Revert to company. Liability of holders to creditors. 62.** If after such demand or notice as is prescribed by the letters patent, or by resolution of the directors, or by the by-laws of the company, any call made upon any share is not paid within such time as by such letters patent or by resolution of the directors or by the by-laws is limited in that behalf, the directors, in their discretion, by vote to that effect duly recorded in their minutes, may summarily declare forfeited any shares whereon such call is not paid. 2. Such shares so declared forfeited shall thereupon become the property of the company, and may be disposed of as the company by the by-laws or otherwise prescribes. 3. Notwithstanding such forfeiture, the holder of such shares at the time of forfeiture shall continue liable to the creditors of the company at such time for the full amount unpaid on such shares at the time of forfeiture, less any sums which are subsequently received by the company in respect thereof.

2 Edw. 7, c. 15, § 49. In *Harris v. Dry Dock Co.*, (1859), 7 Gr. 450, it was held that a shareholder, who was also a judgment creditor, was entitled to a decree compelling directors to make calls, notwithstanding that the latter had power to order a forfeiture of shares, the forfeiture being a cumulative remedy; and see *Marmora Foundry Co. v. Jackson*, (1852), 9 U. C. Q. B. 509; *Gilman v. Royal Canadian Insurance Co.*, (1884), M. L. R. 1 S. C. 1. Power to forfeit shares is to be exercised only when the circumstances of the shareholder render it expedient in the interests of the company, and cannot be employed for the benefit of a shareholder. — *Common v. McArthur*, (1898), 29 S. C. R. 239; Shares of bank stock cannot be declared forfeited for nonpayment of calls without notice putting the owner *en demeure*. — *Banque d'Hochelaga*, (1881), 4 L. N. 314; but see *Nelles v. Second Mutual Building Society*, (1881), 29 Gr. 399. For further cases involving sufficiency of notice, see *Freeman v. Canadian, etc., Insurance Co.*, (1908), 17 O. L. R. 296; *Johns v. North Vancouver*, (1909), 11 West. L. R. 220; affirmed, (1910) A. C. 317.

**Enforcement of payment of calls by action. What only need be alleged and proved. 63.** The directors may, if they see fit, instead of declaring forfeited any share or shares, enforce payment of all calls, and interest thereon, by action in any court of competent jurisdiction. 2. In such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, in respect of one call or more, upon one share or more, stating the number or calls and the amount of each call, whereby an action has accrued to the company under this Part.



2 Edw. 7, c. 15, § 50. The fact that the capital stock of a company was not wholly subscribed was held not a defence to an action by the company against a shareholder for calls. — *Rascony, etc., Manufacturing Co. v. Desmarais*, (1886), M. L. R. 2 S. C. 381.

### *Transfer of shares.*

**Invalid without entry. Exception. 64.** Except for the purpose of exhibiting the rights of parties to any transfer of shares towards each other and of rendering any transferee jointly and severally liable with the transferor to the company and its creditors, no transfer of shares unless made by sale under execution or under the decree, order, or judgment of a court of competent jurisdiction, shall be valid for any purpose whatever until entry of such transfer is duly made in the register of transfers: Provided that, as to the stock of any company listed and dealt with on any recognized stock exchange by means of scrip, commonly in use, endorsed in blank and transferable by delivery, such endorsement and delivery shall, excepting for the purpose of voting at meetings of the company, constitute a valid transfer.

2 Edw. 7, c. 15, § 51. Where shares had been transferred but the transferee's name had not been registered, and where it appeared that the transferee had acted as president of the company, it was held, in an action against the transferor, that the transfer was complete, and that the latter had discharged himself from liability as a shareholder. — *Hamilton v. Grant*, (1900), 30 S. C. R. 566. Where a transfer was signed by the wife of the shareholder at his direction, but not acted upon until after his death, it was held that the authority of the wife to deal with the certificate was revoked by the shareholder's death, and the purchaser, who was unable under the company's rules to be registered, was allowed to recover back the purchase money. The fact that the purchaser endeavoured to have himself registered as a holder, was not such an acceptance by him as would deprive him of his right to have the contract rescinded. — *Castleman v. Waghorn, Gwynn & Co.*, (1908), 41 S. C. R. 88.

**Unpaid shares. 65.** No transfer of shares whereof the whole amount has not been paid in shall be made without the consent of the directors.

2 Edw. 7, c. 15, § 52.

**With calls unpaid. 66.** No share shall be transferable until all previous calls thereon are fully paid in.

2 Edw. 7, c. 15, § 54. Where a holder of stock upon which only 40% was paid up transferred his stock certificate issued by the company, the transferee was held not entitled to be registered as owner of paid-up stock. Such transferee may maintain an action in warranty to compel the transferor to pay the remaining 60%. — *Beauchemin v. Richelieu Foundry Co.*, (1908), Q. R. 34 S. C. 261.

**Registration of transfer. 67.** The directors may decline to register any transfer of shares belonging to any shareholder who is indebted to the company.

2 Edw. 7, c. 15, § 55.

**Transfer by personal representative. 68.** Any transfer of the shares or other interest of a deceased shareholder, made by his personal representative, shall, notwithstanding such personal representative is not himself a shareholder, be of the same validity as if he had been a shareholder at the time of his execution of the instrument of transfer.

2 Edw. 7, c. 15, § 56; Imp. § 29.

### *Borrowing powers.*

**Authority. Borrowing. Amount. Issue of bonds. Hypothecation. Issue of bonds in foreign currency. Limitation as to bills and notes. 69.** [As amended by 7 & 8 Edw. 7, c. 16, § 2.] If authorized by by-law, sanctioned by a vote of not less than two-thirds in value of the subscribed stock of the company represented at a general meeting duly called for considering the by-law, the directors may from time to time: a) Borrow money upon the credit of the company; b) Limit or increase the amount to be borrowed; c) Issue bonds, debentures, or other securities of the company for sums not less than one hundred dollars each, and pledge or sell the same for such sums and at such prices as may be deemed expedient; d) Hypothecate, mortgage, or pledge the real or personal property of the company, or both, to secure any such bonds, debentures, or other securities and any money borrowed for the purposes of the company. Provided that such bonds, debentures, or other securities may be for sums not less than twenty pounds sterling, five hundred francs, or four hundred marks, or for sums not less than the nearest equivalent in round figures of other money to one hundred dollars in Canadian currency. 2. Nothing in this section contained shall limit or restrict the borrowing of money

by the company on bills of exchange or promissory notes made, drawn, accepted, or endorsed by or on behalf of the company.

2 Edw. 7, c. 15, § 57; 4 Edw. 7, c. 5, § 3; Imp. § 87. See notes § 29, *supra*. As to meaning of "debenture," see *Bank of Toronto, v. Cobourg, etc., Railway Co.*, (1884), 7 O. R. 1, at p. 7; *Young v. McNider*, (1895), 25 S. C. R. 272, at p. 277. As to rights of mortgage debenture holders in the property of the company, see *In re Farmers' Loan, etc., Co.*, (1899), 30 O. R. 337.

### *Dividends.*

**Not to impair capital. 70.** No dividend shall be declared which will impair the capital of the company.

2 Edw. 7, c. 15, § 58. Where a deceased president of a company, by falsely representing the earnings of the company, had induced the directors to declare a dividend which they would not otherwise have declared, the company was allowed to recover from the estate of the deceased for the damages sustained. — *Northern Navigation Co. v. Long*, (1905), 11 O. L. R. 230.

**Debts deducted from dividends. 71.** The directors may deduct from the dividends payable to any shareholder all such sums of money as are due from him to the company, on account of calls or otherwise.

2 Edw. 7, c. 15, § 59.

### *Directors.*

**Number of board. 72.** The affairs of the company shall be managed by a board of not more than fifteen and not less than three directors.

2 Edw. 7, c. 15, § 60. For cases on the subject of quorum, see *McLaren v. Fiske*, (1881), 28 Gr. 352; *Victoria Mutual Fire Insurance Co. v. Thompson*, (1882), 32 U. C. C. P. 476.

**Provisional directors. 73.** The persons named as such, in the letters patent, shall be the directors of the company, until replaced by others duly appointed in their stead.

2 Edw. 7, c. 15, § 61. See notes Ontario Companies Act, § 79. *Semble*, provisional directors hold office only for the purpose of organizing the company. — *Hagarty C. J.*, in *Michie v. Erie & Huron Railway Co.*, (1876), 26 U. C. C. P. 566, at p. 574. In *Allan v. Ontario, etc., Railway Co.*, (1898), 29 O. R. 516, one who was employed by a provisional director, with the knowledge of his co-directors, to do certain work on behalf of the company was allowed to recover from the company for the value of his work. For further cases upon the power of provisional directors, see *In re North Simcoe Railway Co. v. Toronto*, (1874), 36 U. C. C. P. 109; *North Sydney, etc., Co. v. Greener*, (1898), 31 N. S. 41. Where, by the act of incorporation, provisional directors were authorized to open books, procure subscriptions, make calls on stock, and do generally what was necessary to organize the company, it was held that they had no power to enter into arrangements by which, to induce a person to subscribe for shares, they were to advance out of the funds of the company, money to enable the intending subscriber to make payments on shares. — *Monarch Life Assurance Co. v. Brophy*, (1907), 14 O. L. R. 1.

**Failure to elect directors, how remedied. 74.** If, at any time, an election of directors is not made, or does not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any subsequent special general meeting of the company duly called for that purpose; and the retiring directors shall continue in office until their successors are elected.

2 Edw. 7, c. 15, § 62.

**Qualifications of directors elected. 75.** No person shall be elected as a director or appointed as a director to fill any vacancy unless he is a shareholder, owning stock absolutely in his own right, and to the amount required by the by-laws of the company, and not in arrear in respect of any call thereon.

2 Edw. 7, c. 15, § 63. Where two directors conveyed shares to a third in order to qualify him as a director they were afterwards estopped from setting up that he held the stock as trustee for them. — *Kiely v. Smyth*, (1879), 27 Gr. 220.

**By-laws for increase or decrease of number of directors and for change of chief place of business. When to be valid. 76.** [As amended by 7 & 8 Edw. 7, c. 16, § 3.] The company may, by by-law, increase to not more than fifteen, or decrease to not less than three, the number of its directors, or may change the company's chief place of business in Canada: Provided that no by-law for either of the said purposes shall be valid or acted upon unless it is approved by a vote of at least two-thirds in value of the stock represented by the shareholders present at a special general meeting duly called for considering the by-law; nor until a copy of such by-law, certified under the seal of the company, has been deposited in the Department of the Secretary of State and published in *The Canada Gazette*.

**Election of directors. 77.** Directors of the company shall be elected by the shareholders, in general meeting of the company assembled at some place within Canada, at such times, in such manner and for such term, not exceeding two



years, as the letters patent, or, in default thereof, as the by-laws of the company prescribe.

2 Edw. 7, c. 15, § 65. Where a new board of directors was elected before the term of office of their predecessors had expired, it was held that a mandamus would lie compelling the company to proceed to another election on the day fixed by the charter. — *The Queen v. Bank of Upper Canada*, (1849), 5 U. C. Q. B. 338. But see *In re Moore & Port Bruce Harbour Co.*, (1857), 14 U. C. Q. B. 365, where the election being clearly illegal, the officers chosen having continued in the discharge of their duties, and no application having been made until more than eight months after the election, the Court refused to issue a mandamus for a new election. In *The Queen v. Hespeler*, (1854), 11 U. C. Q. B. 222, it was held that the office of director in a company was not an office for which an information in the nature of *quo warranto* would lie. The Court has jurisdiction to set aside an election of directors of a company by persons who were mere nominal and not bona fide subscribers. — *Davidson v. Grange*, (1854), 4 Gr. 377.

**If no other provision. Yearly election. By ballot. Vacancies filled by directors. Officers appointed by directors.** 78. In the absence of other provisions in that behalf, in the letters patent or by-laws of the company: a) The election of directors shall take place yearly, and all the directors then in office shall retire, but, if otherwise qualified, they shall be eligible for re-election; b) Every election of directors shall be by ballot; c) Any vacancy occurring in the board of directors may be filled, for the remainder of the term, by the directors from among the qualified shareholders of the company; d) The directors shall, from time to time, elect from among themselves a president and, if they see fit, a vice-president of the company; and may also appoint all other officers thereof.

2 Edw. 7, c. 15, § 66.

**Director indemnified in suits respecting execution of his office. Exception.** 79. Every director of the company, and his heirs, executors and administrators, and estate and effects, respectively, may, with the consent of the company, given at any general meeting thereof, from time, and at all times, be indemnified and saved harmless out of the funds of the company, from and against all costs, charges, and expenses whatsoever which such director sustains or incurs in or about any action, suit, or proceeding which is brought, commenced, or prosecuted against him, for or in respect of any act, deed, matter, or thing whatsoever, made, done, or permitted by him, in or about the execution of the duties of his office; and also from and against all other costs, charges, and expenses which he sustains or incurs, in or about or in relation to the affairs thereof, except such costs, charges, or expenses as are occasioned by his own wilful neglect or default.

2 Edw. 7, c. 15, § 67.

#### *Powers of directors.*

**Powers and duties of directors. By-laws. As to stock. Dividends. Directors. Agents and officers. Meetings. Penalties. Generally.** 80. The directors of the company may administer the affairs of the company in all things, and make or cause to be made for the company, any description of contract which the company may, by law, enter into, and may, from time to time, make by-laws not contrary to law, or to the letters patent of the company, or to this Part, as to the following matters: a) The regulating of the allotment of stock, the making of calls thereon, the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, and the transfer of stock; b) The declaration and payment of dividends; c) The amount of the stock qualifications of the directors, and their remuneration, if any; d) The appointment, functions, duties, and removal of all agents, officers and servants of the company, the security to be given by them to the company and their remuneration; e) The time and place for the holding of the annual meetings of the company, the calling of meetings, regular and special, of the board of directors and of the company, the quorum, the requirements as to proxies, and the procedure in all things at such meetings; f) The imposition and recovery of all penalties and forfeitures not otherwise provided for in this Part; g) The conduct, in all other particulars, of the affairs of the company not otherwise provided for in this Part.

2 Edw. 7, c. 15, § 68. See notes Ontario Companies Act, § 73, *infra*, Directors of a railway company have, even in the absence of express power, an authority to appoint the necessary officers and agents. — *Falkiner v. Grand Junction Railway Co.*, (1883), 4 O. R. 350. Directors may delegate to a general agent the power of appointing sub-agents. — *Howarth v. Singer Manufacturing Co.*, (1883), 8 O. A. R. 264. But they cannot delegate statutory power to allot stock. — *In re Bolt & Iron Co.*, *Hovenden's Case*, (1884), 10 O. P. R. 434; *In re Pakenham Packing Co.*, (1904), 12

**O. L. R. 100.** In *Tanguay v. Royal Paper Mills Co.*, (1907), *Q. R.* 31 *S. C.* 397, it was held that a company cannot, by a general resolution, delegate to its president or to any other officer the powers conferred by law on the board of directors. Directors can assign property of the company to trustees for the benefit of creditors. — *Hovey v. Whiting*, (1887), 14 *S. C. R.* 515. Directors of a mercantile company may raise money on a deposit receipt. — *Merchants Bank v. Hancock*, (1883), 6 *O. R.* 285. The president of a company has no implied power to give an undertaking for the payment of rent, and no recovery can be had on such an undertaking, unless authority on the part of the president to bind the company be shewn, or unless the company is shewn to be estopped from denying such authority. — *Almon v. Law*, (1894), 26 *N. S.* 340. Undertakings by directors not in the ordinary course of the company's business are not binding on the company without ratification. — *Hamilton, etc., Railway Co. v. Gore Bank*, (1873), 20 *Gr.* 190. — But such ratification may be implied from acquiescence. — *Conant v. Niall*, (1870), 17 *Gr.* 574. The general manager of a commercial corporation cannot make a binding contract for the sale of its real estate without special authority. — *Calloway v. Stobart*, (1904), 35 *S. C. R.* 301. Where the managing director of a company, without authority, but with the knowledge of all but one of the directors, expended money for the erection of a store house, which proved useless to the company, it was held that there was no such gross negligence on his part as to make him liable for the expense incurred. — *Cushing Sulphite Co. v. Cushing*, (1905), 37 *N. B.* 313. Where directors, claiming to have accounts against the company for services, allotted stock to themselves in payment of the account, and where it appeared that there was an illegal scheme thus to get control of the company, the issue of stock was set aside. — *Thorpe v. Tisdale*, (1909), 13 *O. W. R.* 1044. Where the secretary of the company subscribed for shares at par and afterwards disposed of them at par to directors, and where it was established in evidence that the transaction was for the purpose of retaining control of the company, it was held that this allotment of shares was not illegal, and that the directors were acting within their powers. — *Harris v. Sumner*, (1908), 4 *N. B. Eq.* 58. Where the directors, without authority, paid the secretary of a company commissions for converting preferred stock into bonds, it was held that, although the secretary had received the commissions in good faith but under a mistake of law, the money so paid could be recovered by the company. — *Rountree v. Sydney Land & Loan Co.*, (1907), 39 *S. C. R.* 614. Where the charter of a charitable society provided that the company might assign to any of its officers such remuneration as they might deem requisite, it was held that a grant by the shareholders at an annual meeting to the treasurer of a sum of money as remuneration for his services during the past thirty years was valid. — *Bartram v. Birtwhistle*, (1908), 15 *O. L. R.* 634. Where the president and vice-president of a company, without proper authority but with the acquiescence of their co-directors, for several years drew large sums ostensibly as salaries as general manager and managing director, it was held that dissatisfied shareholders could object to such payment although the majority were prepared to ratify them. — *Earle v. Burland*, (1899), 27 *O. A. R.* 540; reversed on another point, *Burland v. Earle*, (1901) *A. C.* 83. For further cases dealing with the fiduciary relations between directors or officers and the company, see: *Highway Advertising Co. v. Ellis*, (1904), 7 *O. L. R.* 504; *Madden v. Dimond*, (1905), 12 *B. C.* 80; *Lasell v. Hannah*, (1906), 37 *S. C. R.* 324; *Bennett v. Haverlock, etc., Co.*, (1910), 21 *O. L. R.* 120; 16 *O. W. R.* 19. Where a by-law is passed at the annual general meeting of a company providing for the allotment of new shares by the shareholders, the directors have no power, at a special meeting, to pass a by-law directing the repeal of the first and providing for the allotment of shares by themselves. — *Stephenson v. Vokes*, (1896), 27 *O. R.* 691. Where the board of directors authorized the manager of a company to purchase machinery on certain terms of credit, and the manager purchased on different terms, the vendor having no knowledge of the board's resolution, and the company received and used the machine, it was held liable for the purchase price. Where the charter enabled the directors to make calls at such times as they might deem requisite, it was held not necessary that the calls should be made by by-law, but that a resolution was sufficient. — *Union Fire Insurance Co. v. O'gara*, (1883), 4 *O. R.* 359. See *Ontario Companies Act*, § 48, and notes thereto.

**Confirmation of by-laws. 81.** The directors may, from time to time, repeal, amend, or re-enact such by-laws, but every such by-law, excepting by-laws made respecting agents, officers, and servants of the company, and every repeal, amendment, or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company, duly called for that purpose, shall only have force until the next annual meeting of the company, and in default of confirmation thereat, shall, at and from that time, cease to have force.

2 *Edw. 7, c. 15*, § 68.

#### *Liability of directors and officers.*

**Declaring and paying dividend when company is insolvent. Exoneration from liability. 82.** If the directors of the company declare and pay any dividend when the company is insolvent, or any dividend, the payment of which renders the company insolvent, or impairs the capital thereof, they shall be jointly and severally liable, as well to the company as to the individual shareholders and creditors thereof, for all the debts of the company then existing, and for all debts thereafter contracted during their continuance in office, respectively: Provided that, if any director



present when such dividend is declared does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware of such declaration and is able so to do, enter on the minutes of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or, if no newspaper is there published, in the newspaper published in the place nearest thereto, such director may thereby, and not otherwise, exonerate himself from such liability.

2 Edw. 7, c. 15, § 69. See note § 162, *infra*. As to personal liability of officers signing negotiable instruments in their representative capacity, see: *Bank of Montreal v. Smart*, (1860), 10 U. C. C. P. 15; *Walmsey v. Rent Guarantee Co.*, (1881), 26 Gr. 484; *Brown v. Howland*, (1885), 9 O. R. 48; affirmed, s. c. (1886), 15 O. A. R. 750; *Fairchild v. Ferguson*, (1892), 21 S. C. R. 484; *Bridgewater Cheese Co. v. Murphy*, (1894), 26 O. R. 327; affirmed, s. c., (1896), 23 O. A. R. 66. Where a voidable contract, fair in its terms and within the power of the company, had been entered into by directors with one of their number as sole vendor, it was held that such vendor was entitled to vote as a shareholder in a general meeting of the shareholders to ratify such contract. — *Northwest Transportation Co. v. Beatty*, (1887), 12 A. C. 589. As to the liability of a promotor who purchases property with the intention of selling it to the prospective company, see: *In re Hess Manufacturing Co.*, *Edgar v. Sloan*, (1894), 23 S. C. R. 644; *Petrie v. Guelph Lumber Co.*, (1886), 11 S. C. R. 450; *Frazer River Mining, etc., Co. v. Gallagher*, (1885), 5 B. C. 82; *Bennett v. Haverlock, etc., Co.*, (1910), 21 O. L. R. 120; 16 O. W. R. 19; *Garvin v. Edmonson*, (1909), 14 O. W. R. 435. Promoters who contract obligations on behalf of a proposed company are personally liable if the company, after incorporation, repudiates the same. — *Irwin v. Lessard*, (1889), 17 Rev. Leg. 589; *Sandusky Coal Co. v. Walker*, (1896), 27 O. R. 677; *Hung Man v. Ellis*, (1895), 3 B. C. 486; *Clergue v. Humphrey*, (1900), 31 S. C. R. 66; *Milburn v. Wilson*, (1901), 31 S. C. R. 481; *Vulcan Iron Works v. Leary*, (1905), 1 West. L. R. 453; *Patterson v. Brown*, (1905), 6 O. W. R. 204. In *Duquenne v. Compagnie Générale des Boissons Canadiennes*, (1907), Q. R. 31 S. C. 409, it was held that an agreement entered into between a private person and a company to be formed is of no effect as respects the latter after its incorporation. Having no legal existence at the time the agreement was made, it cannot ratify it. To make it effective it is necessary for the company, after its incorporation, through its board of directors, to become formally bound in the manner provided by law.

**Liability of directors for transfer of shares to insolvent. Exoneration from liability.** 83. Whenever any transfer of shares not fully paid in has been made with the consent of the directors to a person who is not apparently of sufficient means to fully pay up such shares, the directors shall be jointly and severally liable to the creditors of the company, in the same manner and to the same extent as the transferring shareholder, but for such transfer, would have been: Provided that if any director present when any such transfer is allowed does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware of such transfer and is able so to do, enter on the minute book of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, then in the newspaper published nearest to such place, such director may thereby, and not otherwise, exonerate himself from such liability.

2 Edw. 7, c. 15, § 52.

**Loan by company to shareholders.** 84. If any loan is made by the company to any shareholder in violation of the provisions of this Part, all directors and other officers of the company making the same, or in anywise assenting thereto, shall be jointly and severally liable for the amount of such loan, with interest to the company, and also to the creditors of the company for all debts of the company then existing, or contracted between the time of the making of such loan and that of the repayment thereof.

2 Edw. 7, c. 15, § 70.

**Liability of directors for wages unsatisfied. Limitation as to time.** 85. The directors of the company shall be jointly and severally liable to the clerks, labourers, servants, and apprentices thereof, for all debts not exceeding six months' wages due for service performed for the company whilst they are such directors respectively; but no director shall be liable to an action therefor, unless the company is sued therefor within one year after the debt becomes due, nor unless such director is sued therefor within one year from the time when he ceased to be such director, nor unless an execution against the company in respect of such debt is returned unsatisfied in whole or in part. 2. The amount unsatisfied on such execution shall be the amount recoverable with costs from the directors.

2 Edw. 7, c. 15, § 71. See *Welch v. Ellis*, (1895), 22 O. A. R. 255, decided under the corresponding section of the Ontario Companies Act. But note that the Ontario Act did not include the word "clerk," as found in this Act. In *Fee v. Turner*, (1904), Q. R. 13 K. B. 435, it was held that a person engaged to perform manual work at a daily wage is a "labourer" within the meaning of this section, although, being a workman of superior capacity, he is intrusted with the supervision of other workman.

**Liability of directors for premature commencement of business.** 86. Every director of any company who expressly or impliedly authorizes the commencement of operations by the company or the incurring of any liabilities by the company before ten per centum of its authorized capital has been subscribed and paid for, shall be jointly and severally liable with the company for the payment of any such liabilities so incurred.

2 Edw. 7, c. 15, § 18. In *North Sydney, etc., Co. v. Greener*, (1898), 31 N. S. 41, it was held that the words "commence operations" were not intended to prevent calls being made on stock subscribed for, nor to prevent the provisional directors from doing any act in the name of the company within their power, so long as such act fell short of what might properly be called commencing operations.

### *Meetings.*

**Special meeting.** 87. Shareholders who hold one-fourth part in value of the subscribed stock of the company may at any time by written requisition and notice call a special meeting of the company for the transaction of any business specified therein.

2 Edw. 7, c. 15, § 72; Imp. § 66. The shareholders of one-fourth part in value of the subscribed stock were held competent to convene a special meeting for the election of directors where no annual general meeting had been held or, where if held, no election had taken place. — *Austin Mining Co. v. Gemmell*, (1886), 10 O. R. 696. While questions of ordinary business policy falling within the charter are decided by a majority vote, nevertheless, if what the majority propose will require an abandonment of the enterprise or a deviation from the charter, it must be to the manifest interest of all the shareholders before the minority can be bound. In *Anyot v. Dominion Cotton Mills*, (1909), Q. R. 36 S. C. 35, it was held, in such a case, that the Supreme Court might, upon application of a shareholder, inquire into the circumstances and annul the proceedings if not clearly to the advantage of all, especially if there appear to be a fraudulent combination for the benefit of the majority. Where holders of the majority of shares authorized the selling of property to pay the debts of the company, it was held that the sale was not to be enjoined at the instance of dissenting shareholders. — *Patrick v. Empire Coal & Tramway Co.*, (1907), 3 N. B. Eq. 571.

**Provisions as to notice, votes, proxies, calls to be paid, majority vote, casting vote.** 88. In the absence of other provisions in that behalf in the letters patent or by-laws of the company: a) Notice of the time and place for holding a general meeting of the company shall be given at least fourteen days previously to the time in such notice specified for such meeting, in some newspaper published in the place where the head office or chief place of business of the company is situate, or if there is no such newspaper, then in the place nearest thereto in which a newspaper is published; b) At all general meetings of the company, every shareholder shall be entitled to give one vote for each share then held by him; and such votes may be given in person or by proxy if such proxy is himself a shareholder: Provided that no shareholder shall be entitled either in person or by proxy, to vote at any meeting unless he has paid all the calls then payable upon all the shares held by him; c) All questions proposed for the consideration of the shareholders at such meetings shall be determined by the majority of votes, and the chairman presiding at such meetings shall have the casting vote in case of an equality of votes.

2 Edw. 7, c. 15, § 73; Imp. § 67. See notes § 87, *supra*. For cases on sufficiency of notice see: *Portland, etc., Ferry Co. v. Pratt*, (1850), 2 N. B. 17; *Cannon v. Toronto Corn Exchange*, (1880), 5 O. A. R. 268; *Marsh v. Huron College*, (1880), 27 Gr. 655; *McLaren v. Fiske*, (1881), 28 Gr. 352; *Waddell v. Ontario Canning Co.*, (1889), 18 O. R. 41.

### *Books of the company.*

**Books shall contain charter, agreement, by-laws, names of shareholders, address and calling, number of shares, amounts paid, names, addresses, and calling of directors.** 89. The company shall cause a book or books to be kept by the secretary, or by some other officer specially charged with that duty, wherein shall be kept recorded: a) A copy of the letters patent incorporating the company, and of any supplementary letters patent, and of the preliminary memorandum of agreement and of all by-laws of the company; b) The names, alphabetically arranged, of all persons who are or have been shareholders; c) The address and calling of



every such person, while such shareholder, as far as can be ascertained; d) The number of shares of stock held by each shareholder; e) The amounts paid in and remaining unpaid, respectively, on the stock of each shareholder; and f) The names, addresses, and calling of all persons who are or have been directors of the company, with the several dates at which each became or ceased to be such director.

2 Edw. 7, c. 15, § 74; Imp. § 25.

**Register of transfers. 90.** A book called the register of transfer shall be provided, and in such book shall be entered the particulars of every transfer of shares in the capital of the company.

2 Edw. 7, c. 15, § 74; Imp. § 25.

**Books to be open for inspection. Extracts therefrom. 91.** Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open, at the head office or chief place of business of the company, for the inspection of shareholders and creditors of the company, and their personal representatives, and of any judgment creditor of a shareholder. 2. Every such shareholder, creditor, or personal representative or judgment creditor may make extracts therefrom.

2 Edw. 7, c. 15, § 75; Imp. § 30. In *In re Bank of Upper Canada*, (1829), *Dra. 55*, it was held that a stockholder was not entitled as a matter of right, to inspect stock books or other books of a bank; nor will the Court grant a mandamus for such inspection unless special grounds are shewn. This holding is now obsolete.

#### *Inspection.*

**Application to a judge for an investigation. Evidence on application. Special powers of judge. Costs. Security. 92.** Upon the application of shareholders representing not less than one-fourth in value of the issued capital stock of the company a judge in the Province or territory in which the chief place of business of the company is situated may, if he deems it necessary, appoint a competent inspector to investigate the affairs and management of the company who shall report to the judge the result of the investigation. 2. The application shall be supported by such evidence as the judge may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same. 3. The judge may make necessary rules as to such investigation and prescribe the manner in which and the extent to which the investigation shall be conducted, or may, if he deems it necessary, examine the officers or directors of the company under oath as to matters that come in question. 4. The expense of such investigation shall, in the discretion of the judge, be defrayed by the company, or by the applicants, or partly by the company and partly by the applicants as the judge may order, who may, if he thinks fit, require the applicants to give security to cover the probable cost of the investigation.

2 Edw. 7, c. 15, § 79; Imp. §§ 109, 110.

**Investigation by order of the company. Report in such cases. 93.** The company may by resolution passed at the annual meeting, or at a general meeting called for the purpose, appoint an inspector to examine into the affairs of the company, and may in such resolution direct the manner and extent of such investigation and the matters to be investigated. 2. The inspector so appointed shall have the same powers as an inspector appointed by a judge, and shall make his report in such manner and to such persons as the company by the resolution directs.

2 Edw. 7, c. 15, § 79; Imp. §§ 109, 110.

**Production of books. Examination on oath. 94.** It shall be the duty of all officers and servants of the company to produce for the examination of any inspector appointed by a judge or by the company all books and documents relating to the affairs of the company in their custody or power. 2. Any such inspector may examine upon oath the officers and agents of the company in relation to its business and may administer such oath accordingly.

2 Edw. 7, c. 15, § 79; Imp. § 109 (4, 5).

#### *Procedure.*

**Service of process upon company. Constructive service. 95.** Any summons, notice, order, or other process or document required to be served upon the company, may be served by leaving the same at the office of the company in the city or town in which its chief place of business in Canada is situate, with any adult person in



the employ of the company, or by serving the same on the president or secretary of the company, or by leaving the same at the domicile of either of them, with any adult person of his family or in his employ. 2. If the company has no known office or chief place of business, and has no known president or secretary, the Court may order such publication as it deems requisite to be made in the premises; and such publication shall be deemed to be due service upon the company.

2 Edw. 7, c. 15, § 80; Imp. § 116.

**Cases where use of seal not necessary. 96.** Any summons, notice, order, or proceeding requiring authentication by the company may be signed by any director, manager, or other authorized officer of the company, and need not be under the seal of the company.

2 Edw. 7, c. 15, § 81; Imp. 117.

**Service of notices on members. 97.** Notices to be served by the company upon the shareholders may be served either personally or by sending them through the post, in registered letters, addressed to the shareholders at their places of abode as they appear on the books of the company.

2 Edw. 7, c. 15, § 82.

**Time from which service reckoned. 98.** A notice or other document served by post by the company on a shareholder shall be deemed to be served at the time when the registered letter containing it would be delivered in the ordinary course of post.

2 Edw. 7, c. 15, § 83.

**Actions between company and shareholders. 99.** Any description of action may be prosecuted and maintained between the company and any shareholder thereof.

2 Edw. 7, c. 15, § 85.

**Setting forth incorporation in legal proceedings. 100.** In any action or other legal proceeding, it shall not be requisite to set forth the mode of incorporation of the company, otherwise than by mention of it under its corporate name as incorporated by virtue of letters patent, or of letters patent and supplementary letters patent, as the case may be, under this Part.

2 Edw. 7, c. 15, § 86.

**Procedure to settle ownership when shares are transmitted otherwise than by transfer. Order of court may be obtained on petition. 101.** Whenever the interest in any shares of the capital stock of the company is transmitted by the death of any shareholder or otherwise, or whenever the ownership of any shares or the legal right of possession of the same changes by any lawful means, other than by transfer according to the provisions of this Part, and the directors of the company entertain reasonable doubts as to the legality of any claim to such shares, the company may make and file in the Court in the Province or Territory in which the head office of the company is situated, a declaration and petition in writing, addressed to the Justices of the Court, setting forth the facts and the number of shares previously belonging to the person in whose name such shares stand in the books of the company, and praying for an order or judgment adjudicating and awarding the said shares to the person or persons legally entitled to the same.

2 Edw. 7, c. 15, § 53.

**Notice of intention to present. Pleading. 102.** Notice of the intention to present such petition shall be given to the person claiming such shares, or to the attorney of such person duly authorized for the purpose, who shall, upon the filing of such petition, establish his right to the shares referred to in such petition; and the time to plead and all other proceedings in such cases shall be the same as those observed in analogous cases before such Court.

2 Edw. 7, c. 15, § 53.

**Costs. 103.** The costs and expenses incurred by the company in procuring such order or judgment shall be paid to the company by the person or persons to whom such shares are declared lawfully to belong and such shares shall not be transferred in the books of the company until such costs and expenses are paid, but this provision shall in no way prejudice the right of the person adjudged to be the lawful owner if such shares to recourse according to the practice of the Court for such costs and expenses against any person contesting his right to such shares.

2 Edw. 7, c. 15, § 53.

**Order to guide company. Order a release. 104.** The company shall be guided by the order or judgment of the Court establishing the right to such shares. 2. Such

order or judgment shall have the effect of a release from every other claim to the said shares or arising in respect thereof and shall fully indemnify and save harmless the said company from any such claim.

2 Edw. 7, c. 15, § 53.

*Statements and returns.*

**Annual statement of officers at general meeting.** 105. The directors of every company shall lay before its shareholders annually and at or before each general meeting of the company for the election of officers, a full printed statement of the affairs and financial position of the company.

2 Edw. 7, c. 15, § 88.

**Return to be made of capital and shares, number of shares taken, calls on each share, calls received, calls unpaid, shares forfeited, names and additions and shares of former shareholders.** 106. It shall be the duty of the company to make a return to the Secretary of State whenever a written request shall be by him made therefor, containing the following particulars: a) The amount of the capital of the company, and the number of shares into which it is divided; b) The number of shares taken from the commencement of the company up to the date of the return; c) The amount of calls made on each share; d) The total amount of calls received; e) The total amount of calls unpaid; f) The amount of shares forfeited; g) The names, addresses, and occupations of the persons who have ceased to be members within the twelve months next preceding, and the number of shares held by each of them.

2 Edw. 7, c. 15, § 89; Imp. § 26.

*Evidence.*

**Books to be prima facie evidence, when.** 107. All books required by this Part to be kept the company shall in any action, suit, or proceeding against the company or against any shareholder be prima facie evidence of all facts purporting to be thereby stated.

2 Edw. 7, c. 15, § 78; Imp. § 220.

**Proof of service by registering letter.** 108. Proof that any letter properly addressed and registered containing any notice or other document permitted by this Part to be served by post was properly addressed and registered and was put into the post office, and of the time when it was so put in, and of the time requisite for its delivery in the ordinary course of post, shall be sufficient evidence of the fact and time of service.

2 Edw. 7, c. 15, § 83.

**Evidence of by-laws.** 109. A copy of any by-law of the company under its seal and purporting to be signed by any officer of the company shall be received as against any shareholder of the company as prima facie evidence of such by-law in all courts in Canada.

2 Edw. 7, c. 15, § 84.

**Proof of incorporation.** 110. In any action or other legal proceeding, the notice in the *Canada Gazette* of the issue of letters patent or supplementary letters patent under this Part shall be prima facie proof of all things therein contained, and on production of such letters patent or supplementary letters patent or of any exemplification or copy thereof, the fact of such notice and publication shall be presumed.

2 Edw. 7, c. 15, § 86; Imp. § 17.

**Proof of matters set forth in letters patent.** 111. Except in any proceeding by scire facias or otherwise for the purpose of rescinding or annulling letters patent or supplementary letters patent issued under this Part, such letters patent or supplementary letters patent, or any exemplification or copy thereof, shall be conclusive proof of every matter and thing therein set forth.

2 Edw. 7, c. 15, § 86; Imp. § 17.

**Proof by declaration or affidavit.** 112. Proof of any matter which is necessary to be made under this Part may be made by oath or affirmation, or by solemn declaration before any justice of the peace, or any commissioner for taking affidavits, to be used in any of the Courts in any of the Provinces of Canada, or any notary public, each of whom is hereby authorized and empowered to administer oaths and receive affidavits and declarations for that purpose.

2 Edw. 7, c. 15, § 87.



*Offences and penalties.*

**Neglect to have notice in Canada Gazette of the granting of letters patent inserted in other newspapers. Penalty.** 113. Every company which fails or neglects to cause a copy of the notice of the granting of letters patent to such company inserted by the Secretary of State in the *Canada Gazette*, or to cause a copy of any notice of any supplementary letters patent extending the powers of the company to any further or other purposes or objects than such as were theretofore conferred upon the company inserted by the Secretary of State in the *Canada Gazette*, to be, forthwith after such insertion in the *Canada Gazette*, inserted on four separate occasions in at least one newspaper in the county, city, or place where the head office or chief agency of the company is established, is guilty of an offence and liable on summary conviction before two justices of the peace to a penalty not exceeding twenty dollars for each day such failure or neglect continues.

2 Edw. 7, c. 15, §§ 10, 29.

**Neglect to keep painted or affixed name of company and word "limited." Penalty.** 114. Every company which does not keep painted or affixed its name, with the word "limited" after it, in manner directed by this Part shall incur a penalty of twenty dollars for every day during which such name is not so kept painted or affixed, and every director and manager of the company, who knowingly and wilfully authorizes or permits such default, shall be liable to the like penalty.

2 Edw. 7, c. 15, § 25; Imp. § 63 (2).

**Not having word "limited" on seal, notice, bill or note, or bill of parcels. Penalty.** 115. Every director, manager, or officer of the company, and every person on its behalf, who uses or authorizes the use of any seal purporting to be a seal of the company, whereon its name with the word *limited* after it, is not engraven in legible characters; or a) Issues, or authorizes the issue of any notice, advertisement, or other official publication of such company; or b) Signs or authorizes to be signed on behalf of such company, any bill of exchange, promissory note, endorsement, cheque, order for money or goods; or c) Issues or authorizes to be issued any bill of parcels, invoice, or receipt of the company; wherein its name, with the said word after it, is not mentioned in legible characters, shall incur a penalty of two hundred dollars, and shall also be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

2 Edw. 7, c. 15, § 25; Imp. § 63 (3).

**Neglect to keep books. Penalty.** 116. Every company who neglects to keep any book or books required by this Part to be kept by the company, shall be guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding twenty dollars for each day that such neglect continues.

2 Edw. 7, c. 15, § 77.

**False entries in and refusing inspection of books. Penalty.** 117. Every director, officer, or servant of the company, who knowingly makes or assists in making any untrue entry in any book required by this Part to be kept by the company, or who refuses or wilfully neglects to make any proper entry therein, or to exhibit as required by this Part any entry made therein, or to allow the same, as required by this Part, to be inspected and extracts to be taken therefrom is guilty of an indictable offence.

2 Edw. 7, c. 15, § 76; Imp. § 216. Cp. Bank Act, (R. S. 1906, c. 29), § 153, where officers are made liable for false statements. Cp. Criminal Code (R. S. 1906, c. 145), § 413, where the making of a false entry is made a criminal offence.

**Neglect to make return to Minister. Penalty. Permitting default.** 118. Every company which for a space of one month neglects or refuses to comply with the written request of the Secretary of State to make the return to him required by this Part shall incur a penalty not exceeding twenty dollars for every day during which such default continues. 2. Every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

2 Edw. 7, c. 15, § 89.

**Refusing to produce books and answer questions. Penalty.** 119. Any officer or agent who on any examination by any inspector appointed by a judge or by the company under this Part, refuses to produce any book or document relating to the affairs of the company or to answer any question relating to the affairs of the company, shall incur a penalty not exceeding twenty dollars in respect of each offence.

2 Edw. 7, c. 15, § 79; Imp. § 109 (4, 5).



## *Part II. Companies Clauses.*

### *Interpretation.*

**Definitions.** 120. In this Part, and in any Act incorporating a company to which this Part applies and with this Part is incorporated as hereinafter provided, and also in all Acts amending such Act, unless the context otherwise requires: a) "Special Act" means any Act incorporating a company to which this Part applies, and with which this Part is so incorporated, and includes all Acts amending such Act; b) "The company" means the company incorporated under the Special Act; c) "The undertaking" means the whole of the works and business of whatsoever kind, which the company is authorized to undertake and carry on; d) "Real property" or "land" includes messuages, lands, tenements, and hereditaments of any tenure, and all immoveable property of any kind; e) "Shareholder" means every subscriber to or holder of stock in the company, and includes the personal representatives of the shareholder.

R. S., c. 118, § 2.

### *Application of Part.*

**Not to railways, banks or banking. Nor to companies subject to third Part. Not to issue notes for circulation.** 121. This Part shall not apply to companies for the construction or working of railways or for the business of banking and the issue of paper money, or to any penny bank, or to any insurance company. 2. No portion of this Part which is inconsistent with Part III. of this Act, shall apply to any company subject to the provisions of Part III. of this Act, nor shall any portion of this Part which is declared by letters patent incorporating any company under the said Part III. not to apply to such company, apply thereto. 3. Nothing in this Part shall be deemed to authorize the company to issue any note payable to the bearer thereof or any promissory note intended to be circulated as money or as the note of a bank or to engage in the business of banking or insurance.

R. S., c. 118, §§ 3, 35; 62 & 63 Vic. c. 41, § 2; 3 Edw. 7, c. 47, § 36.

**Companies subject to this Part. Exception by charter.** 122. Except as aforesaid, this Part applies to every joint stock company incorporated subsequently to the twenty-second day of June, one thousand eight hundred and sixty-nine, by any Special Act of the Parliament of Canada for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends; and, so far as applicable to the undertaking and not expressly varied or excepted by the Special Act, this Part is incorporated with the Special Act and forms part thereof and shall be construed therewith as forming one Act: Provided that any of the provisions of this Part may be excepted from incorporation with the Special Act; and for that purpose, it shall be sufficient, to provide in the Special Act, that the sections or subsections of this Part which it is proposed so to except, referring to them by the numbers they bear, shall not be incorporated with the Special Act, and the Special Act shall be construed accordingly.

R. S., c. 118, §§ 3, 4.

### *General powers.*

**Powers constructively conferred by charter.** 123. Every company incorporated under any Special Act shall be a body corporate under the name declared in the Special Act, and may acquire, hold, alienate, and convey any real property necessary or requisite for the carrying on of the undertaking of such company, and shall be invested with all the powers, privileges, and immunities necessary to carry into effect the intention and objects of this Part and of the Special Act, and which are incident to such corporation, or are expressed or included in the Interpretation Act.

R. S., c. 118, § 5. See note § 29, *supra*.

**Powers subject to this Part, unless excepted.** 124. All powers given by the Special Act to the company shall be exercised, subject to the provisions and restrictions contained in this Part, except such as are by the Special Act expressly excepted from incorporation therewith.

R. S., c. 118, § 6.

### *Directors, their duties and powers.*

**To manage company.** 125. The affairs of the company shall be managed by a board of not more than nine and not less than three directors.

R. S., c. 118, § 7. See note § 72, *supra*.

**Provisional directors. 126.** The persons named as such, in the Special Act, shall be the first or provisional directors of the company, and shall remain in office until replaced by directors duly elected in their stead.

R. S., c. 118, § 8. See note § 73, *supra*.

**Qualification of subsequent directors. 127.** No person shall be elected as a director unless he is a shareholder, owning stock absolutely in his own right, and not in arrear in respect of any call thereon; and the majority of the directors of the company so chosen shall, at all times, be persons resident in Canada, and subjects of His Majesty, by birth or naturalization.

R. S., c. 118, § 9. See note § 75, *supra*.

**Election of directors. Term of office. 128.** The directors of the company shall be elected by the shareholders, in general meeting of the company assembled, at such times, in such manner, and for such term, not exceeding two years, as the Special Act prescribes, and in default of the Special Act so prescribing, as the by-laws of the company prescribe.

R. S., c. 118, § 10. See notes § 77, *supra*.

**General provisions. 129.** In the absence of other provisions in that behalf, in the Special Act, or the by-laws of the company: a) The election of directors shall take place yearly, and all the directors then in office shall retire, but, if otherwise qualified, they shall be eligible for re-election; b) Election of directors shall be by ballot; c) Vacancies occurring in the board of directors may be filled, for the remainder of the term, by the directors from among the qualified shareholders of the company; d) The directors shall, from time to time, elect from among themselves a president of the company, and shall also appoint, and may remove at pleasure, all other officers thereof.

R. S., c. 118, § 11. See note § 78, *supra*.

**Failure to elect directors. Remedy. 130.** If at any time, an election of directors is not made or does not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the company, duly called for that purpose, and the retiring directors shall continue in office until their successors are elected.

R. S., c. 118, § 12.

**Powers of directors. 131.** The directors of the company may, in all things, administer the affairs of the company, and may make or cause to be made for the company, any description of contract which the company may, by law, enter into.

R. S., c. 118, § 13. See note § 80, *supra*.

### *By-laws.*

**Directors may make as to stock. Dividends. Directors. Officers. Meetings. Penalties. Generally. 132.** The directors may, from time to time, make by-laws not contrary to law or to the Special Act or to this Part, for: a) The regulating of the allotment of stock, the making of calls thereon, the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for nonpayment, the disposal of forfeited stock and of the proceeds thereof, and the transfer of stock; b) The declaration and payment of dividends; c) The number of the directors, their term of service, the amount of their stock qualification and their remuneration, if any; d) The appointment, functions, duties, and removal of all agents, officers, and servants of the company, the security to be given by them to the company and their remuneration; e) The time and place for the holding of the annual meeting of the company, the calling of meetings, regular and special, of the board of directors and of the company, the quorum at meetings of the directors and of the company, the requirements as to proxies, and the procedure in all things at such meetings; f) The imposition and recovery of all penalties and forfeitures admitting of regulation by by-law; and g) The conduct, in all other particulars, of the affairs of the company.

R. S., c. 118, § 13. See note § 80, *supra*.

**Changing by-laws. Confirmation necessary. 133.** The directors may, from time to time, repeal, amend, or re-enact any such by-law: Provided that every such by-law, repeal, amendment, or re-enactment, unless in the meantime confirmed at a general meeting of the company duly called for that purpose, shall only have force until the next annual meeting of the company and in default of confirmation thereof shall from the time of such default cease to have force or effect.

R. S., c. 118, § 13.



**Preference stock by by-law. Holders may be given control of certain matters.**

**134.** The directors of any company, other than a trust company, may also make a by-law for creating and issuing any part of the capital stock as preference stock, giving the same such preference and priority as respects dividends, and in any other respect over ordinary stock, as in the by-law may be declared. 2. Such by-law may provide that the holders of shares of such preference stock shall have the right to select a certain proportion therein stated of the board of directors, or may give such holders such other control over the affairs of the company as is considered expedient.

62 & 63 Vic. c. 40, §§ 1, 2.

**Sanction by shareholders necessary. Exception when sanctioned by Governor in Council.**

**135.** No such by-law shall have any force or effect whatever until after it has been unanimously sanctioned by a vote of the shareholders present in person or by proxy at a general meeting of the company duly called for considering the same and representing two-thirds of the stock of the company, or unanimously sanctioned in writing by the shareholders of the company: Provided, that if the by-law be sanctioned by not less than three-fourths in value of the shareholders of the company, the company may, through the Secretary of State, petition the Governor in Council for an order approving the said by-law, and the Governor in Council may, if he sees fit, approve thereof, and from the date of such approval the by-law shall be valid and may be acted upon.

62 & 63 Vic. c. 40, § 3.

**Change of head office by by-law.** **136.** Except companies which, under their Act of incorporation or any amendment thereto have power to change their head office or chief place of business, the company may, from time to time, by by-law, change the locality of its head office or principal place of business in Canada to any other place in Canada.

63 & 64 Vic. c. 42, § 1.

**Sanction of by-law by company necessary. Exception when sanctioned by Governor in Council. Publication in Canada Gazette and newspaper necessary.**

**137.** No such by-law shall have any force or effect whatever until after it has been unanimously sanctioned by a vote of the shareholders, present in person or by proxy at a general meeting of the company duly called for considering the same, and representing two-thirds of the stock of the company; or until it is unanimously sanctioned in writing by the shareholders of the company: Provided, that if the by-law is sanctioned in writing by not less than three-fourths in value of the shareholders of the company, the company may, through the Secretary of State, petition the Governor in Council for an order approving the said by-law, and the Governor in Council may, on compliance with such terms and conditions, if any, as he directs, approve thereof, and upon such approval the by-law shall be valid. 2. No such by-law shall be acted upon until two months after a copy of the by-law has been published by the company, once in the *Canada Gazette* and once in a newspaper published in the city, town, or village in or nearest to which the head office or principal place of business of the company is then already situate, and in which a newspaper is published.

63 & 64 Vic. c. 42, § 1.

*Capital stock and calls thereon.*

**Stock to be personal estate.** **138.** The stock of the company shall be personal estate, and shall be transferable in such manner only, and subject to such conditions and restrictions as are prescribed by this Part, or by the Special Act or the by-laws of the company.

R. S., c. 118, § 15. See note § 45, *supra*.

**Allotment of stock.** **139.** If the Special Act makes no other definite provision, the stock of the company shall be allotted at such times and in such manner as the directors, by by-law or otherwise, prescribe.

R. S., c. 118, § 16. See note § 46, *supra*.

**Calls on stock. Interest on amount unpaid.** **140.** The directors of the company may call in and demand from the shareholders thereof respectively, all sums of money by them subscribed at such times and places and in such payments or instalments as the Special Act or this Part requires or allows. 2. Interest shall accrue and fall due, at the rate of six per centum per annum, upon the amount of any unpaid call, from the day appointed for payment of such call.

R. S., c. 118, § 17. See notes §§ 58, 59, 60, *supra*.



**Ten per cent. to be called in each year.** 141. At least ten per centum upon the allotted stock of the company shall, by means of one or more calls, be called in and made payable within one year from the incorporation of the company; and for every year thereafter, at least a further ten per centum thereof shall, in like manner, be made payable and called in, until the whole has been so called in.

R. S., c. 118, § 18.

**Forfeiture of shares for default in paying calls. Forfeited shares go to company.**

142. If, after such demand or notice as by the Special Act or the by-laws of the company is prescribed, any call made upon any share or shares is not paid within such time as by such Special Act or by-laws is limited in that behalf, the directors, in their discretion, by resolution to that effect, reciting the facts and duly recorded in their minutes, may summarily declare forfeited any shares whereon such payment is not made. 2. Such shares shall thereupon become the property of the company, and may be disposed of as the directors by by-law or otherwise prescribe.

R. S., c. 118, § 20. See note § 62, *supra*.

**Restriction as to transfer.** 143. No share shall be transferable, until all previous calls thereon have been fully paid, or until it is declared forfeited for non-payment of a call or calls thereon.

R. S., c. 118, § 21. See note § 67, *supra*.

#### *Books of the company.*

**Stock book to be kept. Contents.** 144. The company shall cause a book or books to be kept by the secretary, or by some other officer specially charged with that duty, wherein shall be kept recorded: a) The names, alphabetically arranged, of all persons who are or have been shareholders; b) The address and calling of every such person, while such shareholder; c) The number of shares of stock held by each shareholder; d) The amounts paid in, and remaining unpaid, respectively, on the stock of each shareholder; e) All transfers of stock, in their order as presented to the company for entry, with the date and other particulars of each transfer, and the date of the entry thereof; and, f) The names, addresses, and calling and all persons who are or have been directors of the company, with the several dates at which each became or ceased to be such director.

R. S., c. 118, § 23.

**Powers of directors as to entries of transfers.** 145. The directors may allow or refuse to allow the entry in any such book, of any transfer of stock whereof the whole amount has not been paid.

R. S., c. 118, § 24.

**Transfer valid only after entry. Exception.** 146. No transfer of stock, unless made by sale under execution or under the decree, order, or judgment of a court of competent jurisdiction, shall be valid for any purpose whatsoever until entry thereof has been duly made in such book or books, except for the purpose of exhibiting the rights of the parties thereto towards each other, and of rendering the transferee liable, in the meantime, jointly and severally with the transferrer, to the company and its creditors.

R. S., c. 118, § 25.

**Stock books to be open for inspection.** 147. Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders and creditors of the company, and their personal representatives, at the head office or chief place of business of the company, and every shareholder, creditor, or personal representative may make extracts therefrom.

R. S., c. 118, § 26.

#### *Offences and penalties.*

**Entries falsely made or neglected. Penalty.** 148. Every director, officer, or servant of the company who knowingly makes or assists in making any untrue entry in any book required by this Part to be kept by such company, or who refuses or wilfully neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected, and extracts to be taken therefrom, is guilty of an indictable offence, and liable to imprisonment for any term not exceeding two years.

R. S., c. 118, § 28. See note § 117, *supra*.

**Neglect to permit inspection. Penalty.** 149. Every company which neglects to keep open for inspection as required by this Part any book or books required by this Part to be kept by such company shall forfeit its corporate rights.

R. S., c. 118, § 29.

*Shareholders' liability.*

**Liability of shareholder to creditors. Limit of liability. 150.** Every shareholder shall until the whole amount of his stock has been paid up be individually liable to the creditors of the company to an amount equal to that not paid up thereon; but shall not be liable to an action therefor by any creditor until an execution against the company at the suit of such creditor has been returned unsatisfied in whole or in part. 2. The amount due on such execution, not exceeding the amount unpaid by the shareholder on his stock, shall be the amount recoverable with costs from such shareholder.

R. S., c. 118, § 30. See note § 39, *supra*.

**Limitation of liability of shareholders. 151.** The shareholders of the company shall not, as such, be held responsible for any act, default, or liability whatsoever, of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatsoever, relating to or connected with the company, beyond the amount of their respective shares in the capital stock thereof.

R. S., c. 118, § 31. See note § 39, *supra*.

**Trustees not personally liable. Estate liable. Pledgor only liable. 152.** No person holding stock in the company as an executor, administrator, tutor, curator, guardian, or trustee shall be personally subject to liability as a shareholder; but the estate and funds in the hands of such person shall be liable in like manner and to the same extent as the testator, or intestate if living, or the minor, ward, or interdicted person or the person interested in such trust fund if competent to act and holding such stock in his own name, would be liable. 2. No person holding stock in the company as collateral security shall be personally subject to liability as a shareholder; but the person pledging such stock shall be considered as holding the same and shall be liable as a shareholder accordingly.

R. S., c. 118, § 32. See notes §§ 41, 42, *supra*.

*Meetings and voting.*

**Arrears prevent voting. 153.** No shareholder who is in arrear in respect of any call shall vote at any meeting of the company.

R. S., c. 118, § 22.

**Notice of general meetings. 154.** In the absence of other provisions in the behalf in the Special Act or the by-laws of the company, notice of the time and place for holding general meetings of the company shall be given at least ten days previously thereto, in some newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, then in the newspaper published nearest thereto.

R. S., c. 118, § 11. See note § 88, *supra*.

**As many votes as shares. Proxies. 155.** In the absence of other provisions, in manner aforesaid, every shareholder shall be entitled to as many votes at all general meetings of the company as he owns shares in the company, and may vote by proxy.

R. S., c. 118, § 11.

**Trustees and pledgors may vote as shareholders. 156.** Every executor, administrator, tutor, curator, guardian, or trustee shall represent the stock in his possession in his fiduciary capacity at all meetings of the company, and may vote as a shareholder: and every person who pledges his stock may, notwithstanding such pledge, represent the said stock at all such meetings, and vote as a shareholder.

R. S., c. 118, § 33.

**Special meetings may be called by shareholders. 157.** Shareholders who hold one-fourth part in value of the subscribed stock of the company may at any time by written requisition signed by them call a special general meeting of the company for the transaction of any business specified in such requisition, and in the notice made and given for the purpose of calling such meeting.

R. S., c. 118, § 34.

*Preference stock.*

**Holders and shareholders entitled to preference given. 158.** Holders of shares of preference stock, under the provisions of this Part, shall be shareholders within the meaning of this Part, and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of this Part: Provided that in respect of dividends and in any other respect declared by by-law creating and



issuing any part of the capital stock of the company as preference stock under the provisions of this Part, they shall as against the ordinary shareholders be entitled to the preferences and rights given by by-law of the company in that behalf.

62 & 63 Vic. c. 40, § 4. See note § 47, *supra*.

**Saving of creditors' rights. 159.** No provision in this Part as to the creation of preference stock and no by-law authorizing the creation of such stock and nothing done under or in pursuance of any such provision or by-law, shall affect or impair the rights of creditors of any company.

62 & 63 Vic. c. 40, § 5.

#### *Contracts.*

**Contracts by agents and officers. Affixing seal unnecessary. Agent or officer not liable. 160.** Every contract, agreement, engagement, or bargain made, and every bill of exchange drawn, accepted, or endorsed, and every promissory note and cheque made, drawn, or endorsed on behalf of the company, by any agent, officer, or servant of the company, in general accordance with his powers as such under the by-laws of the company, shall be binding upon the company. 2. In no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note, or cheque, or to prove that the same was made, drawn, accepted, or endorsed, as the case may be, in pursuance of any by-law or special vote or order. 3. The person so acting as agent, officer, or servant of the company, shall not be thereby subjected individually to any liability whatsoever to any third person therefor.

R. S., c. 118, § 35.

#### *Trusts.*

**Company not liable. Receipt of shareholders a discharge. Application of money. 161.** The company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, in respect of any share. 2. The receipt of the shareholder in whose name any share stands in the books of the company, shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, and whether or not notice of such trust has been given to the company. 3. The company shall not be bound to see to the application of the money paid upon such receipt.

R. S., c. 118, § 36. See notes § 50, *supra*, and notes Ontario Companies Act § 66, *infra*. The fact of shares being entered in the books of the company and in the transfer as held in trust, is sufficient of itself to shew that the title of the seller was not absolute, and to put the purchaser on inquiry as to the vendor's right to sell the shares. — *Raphael v. McFarlane*, (1890), 18 S. C. R. 183. A holder of shares in trust is not a mandataire prêtre, and holds subject to a prior title on the part of some person undisclosed. Such holding not being forbidden by the law of the Colony, a transferee from such holder is bound to inquire whether the transfer is authorized by the nature of the trust. — *Bank of Montreal v. Sweeney*, (1887), L. R. 12 A. C. 617.

#### *Liability of directors.*

**Liability of directors declaring and paying dividend when company is insolvent. Exoneration. 162.** If the directors of the company declare and pay any dividend when the company is insolvent, or any dividend, the payment of which renders the company insolvent, or diminishes the capital stock thereof, they shall be jointly and severally liable, as well to the company as to the individual shareholders and creditors thereof, for all the debts of the company then existing, and for all thereafter contracted during their continuance in office respectively: Provided that if any director present when such dividend is declared does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware of such dividend being declared and is able so to do, enter on the minutes of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, in the newspaper published nearest thereto, such director may thereby, and not otherwise, exonerate himself from such liability.

R. S., c. 118, § 37. See notes § 82 *supra*. As to when a company is deemed to be insolvent, see *In re Rapid City Farmers' Elevator Co.* (1894), 9 Man. 571; *In re Brighton Medical Association*, (1886), 11 O. R. 478. See also notes Dominion Winding-up Act § 3, *infra*.

**Liability of directors for transfer of shares to insolvent. Exoneration. 163.** Whenever entry is made in the company's books of any transfer of stock not fully paid up, to a person who is not apparently of sufficient means, the directors shall be



jointly and severally liable to the creditors of the company, in the same manner and to the same extent as the transferring shareholder, except for such entry, would have been liable: Provided that if any director present when such entry is allowed does forthwith, or if any director, then absent, does, within twenty-four hours after he becomes aware of such entry, and is able so to do, enter on the minute book of the board of directors, his protest against such transfer, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, then in the newspaper published nearest thereto, such director may thereby, and not otherwise, exonerate himself from such liability.

R. S., c. 118, § 24.

**Liability in case of loans by company to shareholders. 164.** If any loan is made by the company to any shareholder in violation of the provisions of this Part, all directors and other officers of the company who make the same or assent thereto shall be jointly and severally liable to the company for the amount of such loan, and also to third persons to the extent of such loan, with lawful interest, for all debts of the company contracted from the time of the making of such loan to that of the repayment thereof.

R. S., c. 118, § 38.

**Contracts to have words indicating a limited liability. 165.** The directors of the company shall be jointly and severally liable upon every written contract or undertaking of the company, on the face whereof the word "limited" or the words "limited liability" are not distinctly written or printed after the name of the company, where it first occurs in such contract or undertaking.

R. S., c. 118, § 39. See §§ 33, 114, 115, *supra*. See also *Howell Lithographic Co. v. Brethour*, (1899), 30 O. R. 204, decided under the corresponding section of the Ontario Companies Act. A penal action against the company for failure to use the word "limited" may be taken either at the suit of His Majesty or of any private party suing as well for His Majesty as for himself. A notice of the institution of a penal action must be served on the Attorney-General without delay. — *Lamontague v. Grosvenor Apartments*, (1910), 11 Q. P. R. 65.

**Liability of directors for wages unpaid. Limitation. Amount recoverable. 166.** The directors of the company shall be jointly and severally liable to the labourers, servants, and apprentices thereof, for all debts, not exceeding one year's wages, due for services performed for the company whilst they are such directors respectively: Provided that no director shall be liable to an action therefor, unless the company is sued therefor within one year after the debt became due, nor unless such director is sued therefor within one year from the time when he ceased to be such director, nor unless an execution against the company at the suit of such labourer, servant, or apprentice is returned unsatisfied in whole or in part. 2. The amount unsatisfied on such execution shall be the amount recoverable with costs from the directors.

R. S., c. 118, § 40.

#### *Use of funds.*

**No loan to shareholders. 167.** No company shall loan any of its funds to any shareholder.

R. S., c. 118, § 38.

**Purchase of stock in other companies. 168.** No company shall use any of its funds in the purchase of stock in any other corporation, unless in so far as such purchase is specially authorized by the Special Act and also by the Act creating such other corporation.

R. S., c. 118, § 41.

#### *Procedure.*

**Enforcement of payment of calls. 169.** The company may enforce payment of all calls and interest thereon, by action in any court of competent jurisdiction.

R. S., c. 118, § 19. No action on calls will lie unless the preliminary provisions of the charter with respect to calls are complied with. — *Massawippi Valley Railway Co. v. Walker*, (1871), 3 Rev. Leg. 450.

**Form of action. 170.** In such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted to the company in the sum of money to which the calls in arrear amount, in respect of one call or

more, upon one share or more, stating the number of calls and the amount of each call, whereby an action has accrued to the company under this Part.

R. S., c. 118, § 19.

**Service of process on company. Constructive service. 171.** Service of any process or notice upon the company may be made by leaving a copy thereof at the head office or chief place of business of the company, with any adult person in charge thereof, or elsewhere with the president or secretary of the company. 2. If the company has no known office or chief place of business, and has no known president or secretary, the court may order such publication as it deems requisite to be made in the premises, for at least one month, in at least one newspaper. 3. Such publication shall be deemed to be due service upon the company.

R. S., c. 118, § 42.

**Actions against shareholders. 172.** Any description of action may be prosecuted and maintained between the company and any shareholder thereof.

R. S., c. 118, § 43.

**Winding-up Act to apply. 173.** The company shall be subject to the provisions of any general Act for the winding-up of joint stock companies.

R. S., c. 118, § 44.

#### *Evidence.*

**Evidence of by-laws. 174.** A copy of any by-law of the company, under its seal, and purporting to be signed by any officer of the company, shall be received as prima facie evidence of such by-law in all courts in Canada.

R. S., c. 118, § 14.

**Books of company prima facie evidence. 175.** All books required by this Part to be kept by the secretary or by any other officer of the company charged with that duty shall, in any suit or proceeding against the company or against any shareholder, be prima facie evidence of all facts purporting to be therein stated.

R. S., c. 118, § 27.

**Proof of being a shareholder. 176.** In any action by any company to enforce payment of any call or interest thereon, a certificate under the seal of the company and purporting to be signed by any officer of the company to the effect that the defendant is a shareholder, that the call or calls have been made to enforce payment of which or of any interest thereon such action has been brought, and that so much due by him and unpaid thereon, shall be received in all courts as prima facie evidence.

R. S., c. 118, § 19.

### *Part III. Loan Companies.*

#### *Interpretation.*

**Definitions. 177.** In this Part, unless the context otherwise requires: a) "Company" means a company incorporated under its provisions; b) "Minister" means the Minister of Finance.

62 & 63 Vic. c. 41, § 1.

#### *Regulations.*

**Regulations may be made by Governor in Council. 178.** The Governor in Council may, from time to time, make regulations with respect to the following matters, viz.: a) The notice to be given of applications under this Part, and the evidence and material to be produced or filed in support thereof; b) The form and manner of giving any other notice required by this Part or by regulations made under it; c) The forms of petitions, certificates, letters patent, and other instruments and documents relating to proceedings under this Part; d) The persons before whom any affidavit, affirmation, or declaration required by this Part, or by regulations made under it, may be taken or made; e) The departmental or other officers to be charged with the administration of this Part and their respective duties thereunder.

62 & 63 Vic. c. 41, § 3.

#### *Application for incorporation.*

**Application for charter. 179.** Any five or more persons of the full age of twenty-one years may apply to the Governor in Council for letters patent under the Great Seal incorporating them as a loan company under this Part.

62 & 63 Vic. c. 41, § 4.

**Showing number and names of directors of company, its name, head office, capital stock; other information. 180.** The application shall show: a) The number



of the proposed board of directors, and the names of not less than three of the applicants, who are to be the provisional board; b) The proposed name of the company; c) The place where its head office is to be established; d) The amount of the proposed capital stock, the number of shares and the amount of each share; and e) Such other information as may be required by regulations made under this Part.

62 & 63 Vic. c. 41, § 5.

**Acquisition of existing company. Business. Mortgages. Debentures and other securities, excepting bills and notes. Terms on which assets of company may be acquired.** 181. The application may pray for power to acquire the assets of any existing company, whether incorporated by or under the authority of the Parliament of Canada or otherwise, whose main business is lending money on the security of or purchasing or investing in: a) Mortgages or hypothecs upon freehold or leasehold, real estate or other immoveables; and b) The debentures, bonds, stocks, and other securities, excepting bills of exchange and promissory notes, of any government or of any municipal corporation or school corporation or of any chartered bank or incorporated company if incorporated by Canada or any Province of Canada or any former province now forming part of Canada. 2. In such case the applicants shall declare the terms upon which such assets are to be acquired, and shall be required to show to the satisfaction of the Governor in Council that such existing company is in a solvent condition and has power to dispose of its assets in the manner proposed, and has agreed, in a manner binding upon it and subject to the granting of letters patent to the applicants, to such a disposal of them.

62 & 63 Vic. c. 41, § 6; 63 & 64 Vic. c. 43, § 1.

#### *Letters patent.*

**Conditions upon which application may be granted.** 182. Upon the terms of this Part and of any regulations made thereunder being complied with, the Governor in Council may grant such application and issue the letters patent, if he considers it consistent with the public interests so to do.

62 & 63 Vic. c. 41, § 7.

**Effect of charter. Powers of corporation.** 183. By virtue of letters patent so issued the persons therein mentioned and such others as may thereafter become shareholders shall become and be a body corporate, with the rights and powers conferred by law upon corporations, and with the rights and powers and subject to the obligations and restrictions hereinafter declared.

62 & 63 Vic. c. 41, § 12.

**Provisions which may be embodied in charter.** 184. Any provision which might be made by by-law of the company may be embodied in the letters patent, and a provision so embodied shall not be subject to alteration or repeal without the consent of the Governor in Council.

62 & 63 Vic. c. 41, § 8.

#### *Name of company, etc.*

**Company's name.** 185. The name given to a company may differ in whole or in part from that asked for by the applicants.

62 & 63 Vic. c. 41, § 9.

**Name and organization.** 186. The name of the company, the place of its head office, the amount of its capital stock, the number of shares and amount of each share, the number of its directors, and its provisional board shall be as declared in the letters patent, subject to such changes as may be lawfully made.

62 & 63 Vic. c. 41, § 13. In an action for unpaid calls on stock, it was held that the change in the corporate name of the plaintiff was, under the circumstances, no objection to its recovery. — Provincial Insurance Co. v. Cameron, (1880), 31 U. C. C. P. 523; see also Hughes v. Mutual Fire Insurance Co., (1853), 9 U. C. Q. B. 387; Rolph v. Cahoon, (1853), 2 Gr. 623.

**Name to be given. Exception.** 187. The name so given shall not be that of any known company, or partnership, or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to be calculated to deceive or cause confusion: Provided that a subsisting name may be given in whole or part with the consent of the company or person entitled thereto, and that the name of any existing company whose assets are to be acquired may be given to the applicants, if the Governor in Council is satisfied that such company has the best right to that name.

62 & 63 Vic. c. 41, § 10; 63 & 64 Vic. c. 43, § 1.



*Matters directory and conclusive.*

**Provisions relating to preliminaries directory only.** 188. The provisions of this Part relating to matters preliminary to the issue of letters patent or of any certificate, order, or other proceeding by or on behalf of the Governor in Council or Treasury Board or of any minister or departmental or other officer under this Part, shall be deemed to be directory only; and such letters patent or other proceeding shall not be void or voidable on account of any omission or irregularity in respect of any matter preliminary thereto.

62 & 63 Vic. c. 41, § 11.

**Decision of Governor final as to name. Confirmation of agreements, and of by-laws.** 189. As to questions arising under this Part, the decision of the Governor in Council shall be final in respect to: a) The name to be given to a company; b) The granting of applications for letters patent confirming agreements for amalgamation of companies and the issuing of such letters patent; and c) The confirmation by certificate of the Minister of by-laws for the conversion of partly paid-up shares of capital stock into fully paid-up shares.

62 & 63 Vic. c. 41, § 11.

*Organization of company.*

**Subscription of stock. Calling meeting. Electing directors. Notice of meeting. When notice unnecessary.** 190. The provisional directors of a company incorporated under this Part may receive subscriptions for stock in the capital of the company, and so soon as a sum not less than one hundred thousand dollars of such capital stock has been subscribed, and a sum not less than fifty thousand dollars has been paid thereon and deposited with the Minister, may call a meeting of the subscribers to said stock, to be held in the place of the company's head office, at which meeting the board of directors of the company shall be elected, who shall hold office until their successors are duly appointed; and upon the election of such board the functions of the provisional directors shall cease. 2. Two weeks' notice of said meeting shall be given by advertisement in a newspaper published in the place of the head office, and by circular to each subscriber of stock posted by registered letter to his last known address: Provided that if all of the subscribers aforesaid are present in person or represented by proxy, the meeting may be held at any time and at any place without notice.

62 & 63 Vic. c. 41, § 14.

**Deposit may, in certain cases, be dispensed with.** 191. Where the object of the company is wholly or in part to acquire the assets of an existing company, the consideration for such assets may consist wholly or in part of shares in the capital stock of the company for which incorporation is sought. 2. In such case, the Minister may dispense to such extent as he may think proper with the payment and deposit aforesaid.

62 & 63 Vic. c. 41, §§ 6, 14; 63 & 64 Vic. c. 43, § 1.

*Powers and liabilities of company.*

**Certificate requisite for doing business. When given. Not after two years.** 192. A company incorporated under this Part shall not borrow or lend money or otherwise carry on business until it has obtained from the Minister a certificate permitting it to do so, and no application for such certificate shall be made, and no certificate shall be given, until the board of directors has been elected as required by this Part, nor until it has been shown to the satisfaction of the Minister that the provisions in that behalf of this Part have been complied with. 2. No such certificate shall be given unless application therefor be duly made within two years after the issue of the letters patent, or within such extended period as the Governor in Council may, before the expiration of such two years, allow.

62 & 63 Vic. c. 41, § 15.

**Conditions of issue of certificate. Dispensed with, when.** 193. No such certificate shall be given to a company authorized to receive money on deposit unless nor until at least three hundred thousand dollars of its capital stock has been subscribed, and at least one hundred thousand dollars has been paid thereon and deposited with the Minister: Provided that in the case of a company authorized to acquire the assets of an existing company such payment and deposit may be wholly or in part dispensed with.

62 & 63 Vic. c. 41, § 15; 63 & 64 Vic. c. 43, § 1.

**Effect of failure to obtain certificate.** 194. Should application for such certificate not be duly made within the time limited, or should such certificate be refused, the company's letters patent shall thereupon cease and become void, except for the purpose of winding up the affairs of the company and returning to the subscribers the amounts paid upon the subscribed stock or so much thereof as they may be entitled to.

62 & 63 Vic. c. 41, § 16.

**Return of deposit.** 195. Upon the issue of the certificate or upon refusal to issue it, the Minister shall pay over to the company, without interest, the amount deposited with him pursuant to the foregoing provisions of this Part.

62 & 63 Vic. c. 41, § 17.

**Power to acquire assets of existing company.** 196. A company if so authorized may acquire all the assets, rights, credits, effects, and property, real, personal, and mixed, of whatever kind and wheresoever situated, belonging to the existing company or to which it is or may be or become entitled, and no company so authorized shall be vested with any of such assets, credits, effects, or property, or exercise any of such rights, unless nor until the same have been actually so acquired.

62 & 63 Vic. c. 41, § 19; 63 & 64 Vic. c. 43, § 2. See note § 232, *infra*.

**Obligations of new company.** 197. A company duly authorized under this Part in that behalf, which has acquired the assets of an existing company, shall be and is hereby declared to be liable for and subject to, and shall pay, discharge, carry out, and perform, all the debts, liabilities, obligations, contracts, and duties of the company whose assets have been so acquired.

62 & 63 Vic. c. 41, § 18; 63 & 64 Vic. c. 43, § 1.

**May loan money, on mortgages, debentures and securities except bills and notes.** 198. A company shall, subject to the terms and exceptions contained in its letters patent, have the power of carrying on in Canada the business of lending money on the security of and of purchasing or investing in: a) Mortgages or hypothecs upon freehold or leasehold real estate or other immoveables; and b) The debentures, bonds, stocks, and other securities, except bills of exchange and promissory notes, of any government, or of any municipal corporation or school corporation, or of any chartered bank or incorporated company, if incorporated by Canada or any Province of Canada, or any former province now forming part of Canada.

62 & 63 Vic. c. 41, § 20. Cp. *La Société, etc., v. Rossiter*, (1881), 4 L. N. 268, where it was held that a company, incorporated under provincial legislation, and with authority to do so, might lend on promissory notes. The express disability in this section as to lending on bills and notes makes the above case inapplicable as to Dominion loan companies. A company receiving money on deposit which is placed to its credit at a bank, is liable for the money so received though the taking of the money by deposit be *ultra vires*. — *Walmsley v. Rent Guarantee Co.*, (1881), 29 Gr. 484.

**Personal security.** 199. Any company may take personal security as collateral for any advance made or to be made or for any debt due such company.

62 & 63 Vic. c. 41, § 20.

#### *Liabilities to the public.*

**Limitation of liabilities to the public. Cash deducted.** 200. The total amount of the company's liabilities to the public outstanding, from time to time, shall not exceed four times the amount paid up upon its capital stock: Provided that the amount of cash on hand or deposited in chartered banks and belonging to such company shall be deducted from such total liabilities for the purposes of this section.

62 & 63 Vic. c. 41, § 21.

**Debenture stock included.** 201. Debenture stock issued by a company shall be included in estimating such liabilities.

62 & 63 Vic. c. 41, § 26.

**Liability of pre-existing company included.** 202. The liabilities of a previously existing company which are assumed by a company shall form part of such total liabilities to the public of such company so assuming the same.

62 & 63 Vic. c. 41, § 24.

#### *Loans and deposits.*

**No loan on stock of another company.** 203. No company shall invest in or lend money upon the security of the stocks of any other loan company.

62 & 63 Vic. c. 41, § 20. In *Hope v. Glass*, (1863), 23 U. C. Q. B. 86, it was held that a building society might take a bond as additional security for money borrowed from it on a mortgage which was overdue.



**Loans upon company's own stock. Limitation.** No loan or advance except as in this section. 204. The company may, subject to the provisions of any by-law of the company passed under this Part, lend upon its own paid-up permanent stock to an amount not exceeding in the aggregate of all such loans ten per centum of the company's paid-up permanent stock: Provided that no such loan shall exceed eighty per centum of the market price then actually offered for the stock. 2. No company shall, except as in this section provided, make any loan or advance upon the security of any permanent share or shares or permanent stock of the company whether with or without collateral security.

62 & 63 Vic. c. 41, § 20.

**Effect on borrowing power.** 205. All loans or advances by a company to its shareholders upon the security of their permanent stock shall be deducted from the amount of paid-up capital upon which the company is authorized to borrow.

62 & 63 Vic. c. 41, § 22.

**Borrowing power and on what securities.** 206. Except as otherwise provided by its letters patent, and subject to the limitations hereinafter specified, a company which is subject to this Part may borrow money and receive money on deposit upon such terms as to interest, security, and otherwise as may be agreed on, and may issue its bonds, debentures, and other securities for moneys borrowed.

62 & 63 Vic. c. 41, § 21.

**Limitation of amount to be held on deposit.** 207. The amount held on deposit shall not at any time exceed the aggregate amount of the actually paid-up and unimpaired capital of the company and of its cash actually on hand or deposited in any chartered bank or banks in Canada and belonging to the company.

62 & 63 Vic., c. 41, § 21.

**Assets necessary.** 208. So long as a company is indebted for money received upon deposit, its total assets over and above the value of its real estate and its mortgages or hypothecs upon freehold or leasehold estate or other immoveables shall be equal to at least twenty per centum of its indebtedness in respect of such money.

62 & 63 Vic. c. 41, § 25.

#### *Real estate.*

**Limitation of time for holding real estate.** 209. No parcel of land, or interest therein, at any time acquired by the company and not required for its actual use and occupation or held by way of security, shall be held by the company, or by any trustee on its behalf, for a longer period than seven years after the acquisition thereof, but shall be absolutely sold and disposed of, so that the company shall no longer retain any interest therein unless by way of security.

62 & 63 Vic. c. 41, § 38. As to constitutionality of the provision of this section, see: *McDiarmid v. Hughes*, (1888), 16 O. R. 570; *Citizens Insurance Co. v. Parsons*, (1881), 7 A. C. 96; *Colonial Building Association v. Attorney-General*, (1883), 9 A. C. 157.

**Forfeiture. Extension of time.** 210. Any such parcel of land, or any interest therein not required for the actual use and occupation of the company or held by way of security which has been held by the company for a longer period than seven years without being disposed of, shall be forfeited to His Majesty: Provided that the Governor in Council may extend the said period from time to time, not exceeding in the whole twelve years.

62 & 63 Vic. c. 41, § 38.

**Time for enforcement of forfeiture.** 211. No such forfeiture shall take effect or be enforced until the expiration of at least six calendar months after notice in writing to the company of the intention of His Majesty to claim such forfeiture.

62 & 63 Vic. c. 41, § 38.

#### *Debentures and debenture stock.*

**Issue of debenture stock. Status of stock. Ranks with debenture debt.** 212. The directors of a company may, with the consent of the shareholders, at a special general meeting duly called for the purpose, create and issue debenture stock in such amounts and manner, on such terms, and bearing such rate of interest, as the directors from time to time think proper. 2. Such debenture stock shall be treated and considered as part of the ordinary debenture debt of the company. 3. Such debenture stock shall rank equally with such ordinary debenture debt, and no greater rights or privileges shall be conferred upon holders of debenture



stock in respect thereof than are held or enjoyed by holders of ordinary debentures of the company.

62 & 63 Vic. c. 41, § 26.

**Exchange of debentures for debenture stock.** 213. The holders of the ordinary debentures of the company may with the consent of the directors at any time exchange such debentures for debenture stock.

62 & 63 Vic. c. 41, § 29.

**Cancellation of debenture stock.** 214. The company having issued debenture stock may, from time to time, as they think fit, in the interest of the company, but only with the consent of the holders thereof, buy up and cancel the said debenture stock or any portion thereof.

62 & 63 Vic. c. 41, § 30.

#### *Registration.*

**Debenture must be entered in special register. Inspection without fee. Transfer.** 215. The debenture stock aforesaid shall be entered by the company in a register to be kept for that purpose in the head office of the company, wherein shall be set forth the names and addresses of those from time to time entitled thereto, with the respective amounts of the said stock to which they are respectively entitled. 2. The register shall be accessible for inspection and perusal at all reasonable times to every debenture holder, mortgagee, bondholder, debenture stockholder and shareholder of the company without the payment of any fee or charge. 3. Such stock shall be transferable in such amounts and in such manner as the directors may determine.

62 & 63 Vic. c. 41, § 27.

**Registry of transfers.** 216. All transfers of debenture stock of the company shall be registered at the head office of the company, and not elsewhere.

62 & 63 Vic. c. 41, § 28.

#### *Execution of trusts.*

**Company not liable for execution of. Receipt of shareholder a discharge. Application of money.** 217. The company shall not be bound to see to the execution of any trust, whether expressed, implied, or constructive, to which any share or shares of its stock or debenture stock, or to which any deposit or any other moneys payable by or in the hands of such company, may be subject. 2. The receipt of the party or parties in whose name such share or shares, debenture stock or moneys stand in the books of the company shall, from time to time, be sufficient discharge to the company for any payment of any kind made in respect of such share or shares, stock or moneys, notwithstanding any trust to which the same may then be subject, and whether or not the company has had notice of such trust. 3. The company shall not be bound to see to the application of the money paid upon such receipt.

62 & 63 Vic. c. 41, § 32. See notes §§ 50, 161, *supra*.

#### *By-laws by company.*

**Loans to shareholders.** 218. Any company may pass a by-law prohibiting absolutely the loaning to shareholders upon the security of their stock.

60 & 61 Vic. c. 31, § 1; 62 & 63 Vic. c. 41, § 20. See notes § 133, *supra*.

**Limitation of amount.** 219. Subject to the limitations in this Part set forth, any company may pass a by-law limiting the aggregate amount which may be loaned on the stock of such company.

60 & 61 Vic. c. 31, § 1; 62 & 63 Vic. c. 41, § 20.

**Repeal of by-law.** 220. It shall not be lawful for any company to repeal either of the by-laws passed as aforesaid until the liabilities of the company are discharged.

60 & 61 Vic. c. 31, § 1; 62 & 63 Vic. c. 41, § 20.

**Extension of business beyond Canada. Liability of directors.** 221. When the existence or operation of the company is not by the Act or instrument constituting it limited as to time or place, the company may, in general meeting of the members having due notice in that behalf, pass a by-law authorizing its directors to extend the business of the company beyond Canada, but in compliance with the law of foreign jurisdiction. 2. The directors may give effect to such by-law without being liable or responsible as for any breach of trust in so doing.

62 & 63 Vic. c. 41, § 23.

**Building for foreign business.** 222. When, under the provisions of this Part, any company carries on business beyond Canada, the company may, in general

meeting of the members having due notice in that behalf, pass a by-law authorizing the directors to invest the money of the company in the erection or purchase of buildings required for the occupation of the company in any place where the company is so carrying on business and within the limit, if any, authorized by the law of the foreign jurisdiction.

62 & 63 Vic. c. 41, § 23.

**Company lending money on mortgages or debentures, may convert shares into paid-up shares. 223.** Any company whose main business is lending money on the security of or purchasing or investing in: a) Mortgages or hypothecs upon freehold or leasehold, real estate or other immoveables; and b) The debentures, bonds, stocks, and other securities, except bills of exchange and promissory notes, of any government, or of any municipal corporation or school corporation, or of any chartered bank or incorporated company if incorporated by Canada or any Province of Canada or any former province now forming part of Canada; may pass a by-law providing, upon such terms as may be thought best, for the conversion into fully paid-up shares, of shares in its capital stock which have been only partly paid-up.

62 & 63 Vic. c. 41, § 40.

**Sanction necessary. 224.** Such by-law shall not have any force or effect whatever unless nor until it has been sanctioned by a vote of shareholders present or represented by proxy at a general meeting of the company duly called for considering the by-law, and holding not less than two-thirds of the issued capital stock of the company represented at such meeting, and afterwards confirmed by a certificate of the Minister given under the authority of the Treasury Board.

62 & 63 Vic. c. 41, § 40.

*By-laws by directors.*

**Increase of capital stock. 225.** The directors, at any time after ninety per centum of the capital stock of the company has been subscribed and ninety per centum thereof paid in, but not sooner, may by by-law provide for the increase of the capital stock of the company to any amount which they consider requisite.

62 & 63 Vic. c. 41, § 33.

**Decrease of capital stock. Declaration necessary. Creditors not affected. 226.** The directors at any time may by by-law provide for the decrease of the capital stock of the company to any amount not less than one hundred thousand dollars, which they may consider sufficient. 2. The by-law shall declare the number of the shares of the stock so decreased, and the allotment thereof or the rule or rules by which the same is to be made. 3. The liability of shareholders to persons who are, at the time the stock is decreased, creditors of the company, shall remain as though the stock had not been decreased.

62 & 63 Vic. c. 41, § 34.

**Preference stock. Selection of directors by holders. By-law to that effect must be sanctioned. Exception. 227.** The directors of the company may make a by-law for creating and issuing any part of the capital stock as preference stock, giving the same such preference and priority, as respects dividends and in any other respect, over ordinary stock as may be declared by the by-law. 2. The by-law may provide that the holders of shares of such preference stock shall have the right to select a certain stated proportion of the board of directors, or may give them such control over the affairs of the company as may be considered expedient. 3. No such by-law shall have any force or effect whatever until after it has been unanimously sanctioned by a vote of the shareholders, present in person or by proxy at a general meeting of the company duly called for considering the same, or unanimously sanctioned in writing by the shareholders of the company: Provided that, if at such meeting the by-law is sanctioned by shareholders holding three-fourths of the issued capital stock of the company and present or represented by proxy at such meeting, the company may petition the Minister for an order approving the said by-law, and the Minister may, with the approval of the Treasury Board, approve thereof, and, from the date of such approval, the by-law shall be valid and may be acted upon.

62 & 63 Vic. c. 41, § 37.

*Certificate of confirmation.*

**By-law for increase or decrease of stock to be voted by shareholders and confirmed by Minister. 228.** No by-law for increasing or decreasing the capital stock of the company shall have any force or effect whatever, unless nor until it has



been sanctioned by a vote of shareholders present or represented by proxy at a general meeting of the company duly called for considering the by-law, and holding not less than two-thirds of the issued capital stock of the company represented at such meeting, and afterwards been confirmed by a certificate of the Minister given under the authority of the Treasury Board.

62 & 63 Vic. c. 41, § 35.

**Increase or decrease made if bona fide. Certificate. 229.** Upon an application to the Minister for a certificate confirming such by-law, the company shall satisfy him of the bona fide character of the increase or decrease of capital thereby provided for, and, unless it appears that the granting of such certificate would not be in the public interest, the Minister, with the approval of the Treasury Board, may grant the same. 2. The amount of such increase or decrease of capital may with the consent of the company be changed by said certificate and the increase or decrease made subject to such conditions as the Treasury Board may think proper.

62 & 63 Vic. c. 41, § 36.

**Conditions of confirmation. Saving clause. 230.** Upon an application to the Minister for a certificate confirming any by-law of the company for the conversion into fully paid-up shares of partly paid-up shares, unless it appears that the granting of such certificate would not be in the public interest, the Minister may, with the approval of the Treasury Board, grant the same, and upon the granting of such certificate, the said by-law shall come into force and take effect and may be acted on according to its terms.

62 & 63 Vic. c. 41, § 41.

#### *Preference stock.*

**Rights and liabilities of holders. 231.** Holders of shares of preference stock shall be shareholders within the meaning of this Part, and shall in all respects possess the rights and be subject to the liabilities of such shareholders: Provided that in respect of dividends and in any other respect they shall, as against the ordinary shareholders, be entitled to the preferences and rights given by by-law.

62 & 63 Vic. c. 41, § 37. See notes § 47, *supra*.

#### *Amalgamation and purchase.*

**Companies investing in mortgages and securities, except bills and notes, may amalgamate. 232.** Any two or more companies which are subject to the provisions of this Part, or which are incorporated by or under the authority of an Act of the Parliament of Canada and whose main business is lending money on the security of or purchasing or investing in: a) Mortgages or hypothecs upon freehold or leasehold, real estate or other immoveables; and b) The debentures, bonds, stocks, and other securities, except bills of exchange and promissory notes, of any government, or of any municipal corporation or school corporation, or of any chartered bank or incorporated company if incorporated by Canada or any Province of Canada or any former Province now forming part of Canada; may, in the manner herein provided, amalgamate the one with the other or others, and may enter into all agreements and do all acts necessary or convenient for the purposes of such amalgamation.

62 & 63 Vic. c. 41, § 39. See cases discussed in notes to Ontario Companies Act, § 8, *infra*.

**Amalgamation to be by purchase of assets. 233.** Any one or more of such companies may alone or together purchase the entire assets of any other or others of such companies which may sell said assets, and the companies may enter into all agreements of purchase and sale and do all acts necessary or convenient for the purposes of such purchase and sale: Provided that specified assets may be excepted from such purchase and sale.

62 & 63 Vic. c. 41, § 39.

**Agreement to set out terms and working company details. 234.** The agreement for amalgamation or purchase shall prescribe the terms and conditions of the amalgamation or purchase, and may provide for the mode of carrying the same into effect, the name of the amalgamated company, the amount of capital stock, the number of shares and amount of each share, the place of the head office, the number of the board of directors, the names of the first directors and their term of office, the manner of converting the capital stock of each company into that of the amalgamated company, and such other or additional details as may be necessary or



convenient to perfect the new organization and the subsequent management and working thereof, but no share in the amalgamated company shall be terminating or liable to be withdrawn.

62 & 63 Vic. c. 41, § 39.

**Acceptance and approval of agreement by each company at meetings.** 235. The agreement shall be submitted to the shareholders of each of the said companies at a meeting thereof duly called and held separately for the purpose of taking the same into consideration, and, if at each such meeting the same is accepted and approved by resolution passed by shareholders present or represented by proxy and holding not less than two-thirds of all the shares of the issued capital stock of the company, the said agreement may be executed under the corporate seals of the companies, and an application may be made to the Governor in Council by the companies for letters patent confirming the same.

62 & 63 Vic. c. 41, § 39.

**Letters patent confirming amalgamation.** 236. Upon the terms of this Part, and of any regulations made hereunder, being complied with, and, unless it appears that the granting of such application would not be in the public interest, the Governor in Council may grant the same and issue letters patent under the Great Seal confirming said agreement and incorporating the amalgamated companies as a company under this Part.

62 & 63 Vic. c. 41, § 39.

**One company after date of letters.** 237. On, from, and after the date of such letters patent or purchase the said companies shall be amalgamated and shall form one company by the name in said agreement provided, and upon the terms and conditions thereof.

62 & 63 Vic. c. 41, § 39.

**Rights and liabilities of amalgamated company.** 238. Subject to the provisions of this Part in respect to actions or proceedings by or against any of the companies so amalgamated, the amalgamated company shall possess and be vested with all the powers, franchises, privileges, assets, rights, credits, effects, and property, real, personal, and mixed, of whatever kind and wheresoever situated, belonging to either of the said companies or to which either of the said companies may be or become entitled, not including the assets, if any, excepted under the agreement of purchase and sale, and shall be liable for and subject to, and shall pay, discharge, carry out, and perform, all the debts, liabilities, obligations, contracts, and duties of each of said companies.

62 & 63 Vic. c. 41, § 39.

**Powers of amalgamated company.** 239. Subject to the terms and exceptions contained in the letters patent, confirming the agreement of purchase and sale and incorporating the amalgamated company, the provisions of this Part shall apply to the amalgamated company and to the business carried on by it, and, subject as aforesaid, the borrowing and lending powers of such company shall be governed by the provisions of this Part, and, subject as aforesaid, any provision in the charter or Act of incorporation, or of any other Act, applicable to any of the amalgamated companies which is inconsistent with the provisions of this Part, shall cease to have effect.

62 & 63 Vic. c. 41, § 39.

**Assets of amalgamated company. Vesting conveyances to be executed.** 240. On, from, and after the date of such letters patent, the assets purchased and sold shall, in accordance with and subject to the terms of said agreement and without any further conveyance, become vested in the company or companies purchasing. 2. The selling company shall, from time to time, subject to the terms of said agreement, execute such formal and separate conveyances, assignments, and assurances, for registration purposes or otherwise, as may be reasonably required to confirm or evidence the vesting in the purchasing company or companies of the full title and ownership of the assets purchased and sold.

62 & 63 Vic. c. 41, § 39.

#### *Transfers.*

**Transmission of shares otherwise than by transfer. Authentication.** 241. If the interest of any person in any bond, debenture, or obligation of the company which is not payable to bearer, or in the capital stock or debenture stock of the company is transmitted in consequence of the death, or bankruptcy, or insolvency

of the holder thereof, or by lawful means other than a transfer upon the books of the company, the directors shall not be bound to allow any transfer pursuant to such transmission to be entered upon the books of the company, or to recognize such transmission in any manner, until a declaration in writing showing the nature of such transmission, and signed and executed by the person or persons claiming by virtue thereof, and also executed by the former shareholder, if living and has capacity to execute the same, has been filed with the manager or secretary of the company and approved by the directors.

62 & 63 Vic. c. 41, § 42.

**Credit given to declaration before certain officers. Entry of transferee's name.**

**242.** If any such declaration, purporting to be signed and executed, also purports to be made or acknowledged in the presence of a notary public, or of a judge of a court of record, or of a mayor of any city, town, or borough, or other place, or a British consul, or vice-consul, or other accredited representative of the British Government in any foreign country, the directors may, in the absence of direct actual notice of a contrary claim, give full credit thereto. 2. Unless the directors are not satisfied with the responsibility of the transferee, they shall allow the name of the party claiming by virtue of the transmission to be entered in the books of the company.

62 & 63 Vic. c. 41, § 42.

**Transmission by will or intestacy. Evidence of transmission. Justification for action by directors.** **243.** If the transmission takes place by virtue of any testamentary act or instrument, or in consequence of an intestacy, and if the probate of the will or letters of administration or document testamentary, or other judicial or official instrument under which the title, whether beneficial or as trustee, or the administration or control of the personal estate of the deceased is claimed to vest, purports to be granted by any court or authority in the Dominion of Canada, or in Great Britain or Ireland, or any other of His Majesty's dominions, or in any foreign country, the probate of the said will or the said letters of administration or the said document testamentary or the said other judicial or official instrument or an authenticated copy thereof or official extract therefrom, shall, together with the declaration referred to in the two last preceding sections be produced and deposited with the manager, secretary, treasurer, or other officer named by the directors for the purpose of receiving the same. 2. Such production and deposit shall be sufficient justification and authority to the directors for paying the amount or value of any dividend, coupon, bond, debenture, or obligation or share, or transferring, or consenting to the transfer of any bond, debenture, or obligation, or share, in pursuance of, and in conformity to such probate, letters of administration, or other such document aforesaid.

62 & 63 Vic. c. 41, § 43.

### *Agencies.*

**Deposit of transfers.** **244.** Transfers of debenture stock may be left with such agent or agents in the United Kingdom of Great Britain and Ireland, or elsewhere, as the company appoints for that purpose, for transmission to the company's head office for registration.

62 & 63 Vic. c. 41, § 28.

**Agencies in United Kingdom.** **245.** The company may have agencies in any places in Great Britain or elsewhere for the transfer of debenture or other stock and for the transaction of any other business of the company.

62 & 63 Vic. c. 41, § 31.

### *Application to Court.*

**Procedure to settle ownership. Authority of Court. Order of Court indemnifies.**

**246.** Whenever the directors entertain reasonable doubts as to the legality of any claim to or upon such share or shares, bonds, debentures, obligations, dividends, coupons, or the proceeds thereof, it shall be lawful for the directors to file a petition stating such doubt, and praying for an order or judgment adjudicating and awarding the said shares, bonds, debentures, obligations, dividends, coupons, or proceeds to the party or parties legally entitled to the same. 2. Such Court shall have authority to restrain any action or proceedings against the company, the directors or officers thereof, for the same subject-matter, pending the determination of the petition. 3. The company and the directors and officers thereof shall be fully protected and indemnified by obedience to such order or judgment against



all actions, claims, and demands in respect of the matters which have been in question in such petition, and the proceedings thereupon.

62 & 63 Vic. c. 41, § 44.

**Courts in which petition may be filed. 247.** Such petition shall, in the Province of Ontario, be filed in the High Court of Justice; in the Province of Quebec, in the Superior Court; in the Province of Manitoba, in the Court of King's Bench; in the Province of British Columbia, in the Supreme Court; in the Province of Nova Scotia, in the Supreme Court; in the Province of New Brunswick, in the Supreme Court; in the Province of Prince Edward Island, in the Supreme Court; in the Province of Saskatchewan or Alberta, in the Supreme Court of the Northwest Territories pending the abolition of that Court by the legislature of the Province, and thereafter in such Court in either of the said Provinces as may in respect of that Province be substituted by the legislature thereof for the Supreme Court of the Northwest Territories; in the Northwest Territories, in such Court or with such magistrate or other judicial authority as is designated, from time to time, by proclamation of the Governor in Council, published in the *Canada Gazette*; and in the Yukon Territory, in the Territorial Court.

62 & 63 Vic. c. 41, § 44.

**Costs. 248.** If the Court, magistrate, or other judicial authority in or with which such petition is filed adjudges that such doubts were reasonable, the costs, charges, and expenses of the company in and about such petition and proceedings shall form a lien upon such shares, bonds, debentures, obligations, dividends, coupons or proceeds and shall be paid to the company before the directors shall be obliged to transfer, or assent to the transfer of, or pay such shares, bonds, debentures, or obligations, dividends, coupons, or proceeds to the party or parties found entitled thereto.

62 & 63 Vic. c. 41, § 44.

#### *Rights of creditors.*

**Preference stock on conversion of shares not to affect rights of creditors. 249.** No provision in this Part as to the creation of preference stock, and no by-law authorizing the creation of such stock, and nothing done under or in pursuance of any such provision or by-law, and no by-law of the company for the conversion into fully paid-up shares of partly paid-up shares, and no certificate confirming the same, and nothing done under or in pursuance of any such by-law or certificate, shall affect or impair the rights of creditors of the company.

62 & 63 Vic. c. 41, §§ 37, 41.

**Amalgamation not to affect rights of creditors. 250.** Nothing in any agreement of amalgamation of companies under this Part, and nothing in this Part contained or done in pursuance thereof, shall take away or prejudice any claim, demand, right, security, cause of action, or complaint which any person has against any of the companies so amalgamated, or their respective directors or shareholders, or shall relieve any such company, its directors or shareholders, from the payment or performance of any debt, liability, obligation, contract, or duty.

62 & 63 Vic. c. 41, § 39.

**Creditors have full recourse against the amalgamated company. 251.** Any person having any claim, demand, right, cause of action, or complaint, against any company so amalgamated with any other company or companies, and any person to whom any such company is under any liability, obligation, contract, or duty, shall have the same rights and powers with respect thereto and to the collection, recovery, and enforcement thereof from and against the amalgamated company as the person has against such company, or companies originally liable.

62 & 63 Vic. c. 41, § 39.

**Amalgamation not to abate actions. 252.** No action or proceeding by or against any of the said companies so amalgamated shall abate or be affected by such amalgamation, but for all the purposes of such action or proceeding such company may be deemed still to exist, or the amalgamated company may be substituted in such action or proceeding in the place thereof.

62 & 63 Vic. c. 41, § 39.

**Creditors have full recourse against company acquiring assets of another company. 253.** Every person having any claim, demand, right, cause of action, or complaint against any company whose assets have been acquired under this Part, or to whom such company is under any liability, obligation, contract, or duty, shall have the



same rights and powers with respect thereto, and to the collection and enforcement thereof, from and against the new company, its directors and shareholders, as such person has against the company whose assets have been so acquired, its directors and shareholders.

62 & 63 Vic. c. 41, § 18; 63 & 64 Vic. c. 43, § 1.

**Recourse of creditors against company whose assets have been acquired saved.**

**254.** Nothing in this Part contained or done in pursuance thereof, shall take away or prejudice any claim, demand, right, security, cause of action, or complaint which any person has against any company whose assets have been so acquired, or its directors or shareholders, or shall relieve it, or its directors or shareholders, from the payment or performance of any debt, liability, obligation, contract, or duty.

62 & 63 Vic. c. 41, § 19.

#### *Statements.*

**Statement to Minister. 255.** Every company shall transmit, on or before the first day of March in each year, to the Minister in such form and with such details as he from time to time requires and prescribes, a statement in duplicate, to the thirty-first day of December inclusive of the previous year, verified by the oath of the president or vice-president and the manager, setting out: a) The capital stock of the company and the proportion thereof paid up; b) The assets and liabilities of the company; c) The amount and nature of the investments made by the company, both on its own behalf and on behalf of others, and the average rate of interest derived therefrom, distinguishing the classes of securities; d) The extent and value of the lands held by it; and e) Such other details as to the nature and extent of the business as the Minister requires.

62 & 63 Vic. c. 41, § 45.

**Statement of all lands to be furnished. 256.** It shall be the duty of the company to give the Minister, when required, a full and correct statement of all lands at the date of such statement held by the company, or in trust for the company not required for its actual use and occupation or held by way of security.

62 & 63 Vic. c. 41, § 38.

**Private affairs not to be disclosed. 257.** The company shall not be bound to disclose in any statement transmitted by it to the Minister, the name or private affairs of any person who has dealings with the company.

62 & 63 Vic. c. 41, § 45.

### *Part IV. British Loan Companies.*

#### *Interpretation.*

**Company. 258.** In this Part, unless the context otherwise requires, "company" means any institution or corporation duly incorporated under the laws of the Parliament of the United Kingdom for the purpose of lending money.

R. S., c. 125, § 1.

#### *License.*

**License may be issued by Secretary of State. 259.** The Secretary of State may, if he sees fit, issue a license under this Part to any company that applies for such license and complies with the provisions of this Part in that behalf, authorizing it to carry on business in Canada.

R. S., c. 125, § 5.

**Evidence of incorporation and authority. Verification of authority. 260.** Any company so applying, shall furnish the Secretary of State with a certified copy of the charter, Act of incorporation, or articles of association of such company as evidence of the due incorporation of the company and with a power of attorney from such company to the person appointed as the principal agent or manager of such company within Canada, expressly authorizing such agent or manager to apply for such license. 2. The power of attorney shall be under the seal of the company and shall be signed by the president or managing director and secretary thereof, and verified by the oath of an attesting witness.

R. S., c. 125, § 5.

#### *Preliminaries.*

**Formalities to be observed by company before commencing business in Canada.**

**261.** Every company which obtains such license shall, before commencing business, file in the office of the Provincial Secretary of each Province in which such company

proposes to do business, a certified copy of the charter, Act of incorporation, or articles of association of such company, and also a power of attorney to the agent or manager of such company in each such Province, signed by the president or managing director and secretary thereof, and verified as to its authenticity by the oath of the principal agent or manager of such company in Canada, or by the oath of some person cognizant of the facts necessary for its verification.

R. S., c. 125, § 2.

**Contents of power of attorney filed. 262.** Such power of attorney shall expressly authorize such agent or manager, so far as respects business done by him within the Province for which he is agent or manager, to accept service of process in all suits and proceedings against such company in such Province for any liabilities incurred by such company therein, and shall declare that service of process on such agent or manager for such liabilities shall be legal and binding on such company to all intents and purposes whatsoever, and shall waive all claims of error by reason of such service.

R. S., c. 125, § 2.

#### *Powers of company.*

**§ 4 Company licensed may transact loaning business in Canada. Exception. Securities. 263.** Any company which has received a license under this Part and has duly filed as aforesaid such certified copy of charter, Act of incorporation, or articles of association and power of attorney may transact any loaning business, of any description whatsoever, within Canada, in its corporate name, except the business of banking, and may take and hold any mortgages of real estate, and any railway, municipal, or other bonds of any kind whatsoever, on the security of which it lends its money, at any rate of interest not exceeding the rate permissible on such securities by the Acts incorporating similar companies in the several Provinces of Canada, and whether the said bonds form a charge on real estate within Canada or not.

R. S., c. 125, §§ 1, 2. See Ontario Extra Provincial Corporations Act, §§ 3 and 6, and notes thereto, *infra*. As to the right of a foreign corporation to hold personal property in Canada, see *Commercial National Bank of Chicago v. Corcoran*, (1884), 6 O. R. 527. In *Howe Machine Co. v. Walker*, (1874), 35 U. C. Q. B. 37, a foreign corporation was allowed to sue in Canada on a promissory note given to them there for goods furnished by them to the maker of the note. For cases on the right of foreign corporations to do business in Canada, see: *Canadian Pacific Railway Co. v. Western Union Telegraph Co.*, (1890), 17 S. C. R. 151; *Cavanaugh v. Norwich etc., Fire Insurance Co.*, (1900), 4 Q. P. R. 229; *Great Northern Railway Co. v. Furness, etc., Co.*, (1904), 6 Q. P. R. 404; *McDonald v. Klondike Government Concession, Ltd.*, (1906), 4 West. L. R. 151. As to the power of a Provincial legislature to authorize companies to carry on business outside the boundaries of the Province in which they were organized, see *Canadian Pacific Railway Co. v. Ottawa Fire Insurance Co.*, (1906), 39 S. C. R. 405. A receiver appointed by an order of the High Court of Justice in England to an insolvent company incorporated in that country but owning real estate in Quebec, cannot oppose a seizure of such real estate in execution of a judgment rendered against the company. — *Beauvoir v. British Canadian Lead Co.*, (1906), Q. R. 31 S. C. 289.

**Power as to mortgages. Time limit. 264.** Such company may take and hold such mortgages in its corporate name, and may sell and transfer the same, and hold and convey the title to real estate acquired as mortgagees or chargees: Provided that such company shall sell or dispose of the real estate so acquired within five years from the time when the mortgage on such real estate becomes due and payable under the terms of the instrument creating such mortgage.

R. S., c. 125, § 1.

#### *Procedure.*

**Service of process on company. Judgment on service. 265.** After such certified copy of charter, Act of incorporation, or articles of association, and such power of attorney are filed as aforesaid, any process in any suit, action, or proceeding against such company, for any liability incurred in any Province, may be served upon the manager or agent so authorized in the same manner as process is served upon the proper officer of any company incorporated in such Province; and all proceedings may be had thereupon to judgment and execution in the same manner as in proceedings in any civil suit or action in such Province.

R. S., c. 125, § 3.

#### *Notices.*

**Publication of notice of license. Notice of discontinuance. 266.** Every company which obtains such license as aforesaid shall forthwith give due notice thereof in



the *Canada Gazette*, and in at least one newspaper in the county, city, or place where the principal manager or agent of such company transacts the business thereof, and shall continue the publication thereof for the space of one calendar month. 2. Like notice shall be given when such company ceases to carry on business within the Province, and like publication shall be had of notice that it ceases to so carry on business.

R. S., c. 125, § 4.

#### *Returns.*

**Must be made to Minister of Finance. 267.** Every company authorized under the provisions of this Part to lend and invest money in Canada, shall, by its agent or manager in Canada, make returns to the Minister of Finance of all the business done by it in Canada, at the same time and in the same manner as if such company had been incorporated under the provisions of the third Part of this Act.

R. S., c. 125, § 6.

#### *License fee.*

**Amount. 268.** The fee to be paid by a company, on the issuing of a license under this Part, shall be twenty dollars.

R. S., c. 125, § 5.

### *Part V. British and Foreign Mining Companies.*

**British and foreign mining corporations may obtain license to mine. 269.** Any joint stock company or corporation duly incorporated under the laws of the Parliament of the United Kingdom, or under the laws of any foreign country for the purpose of carrying on mining operations may, on receiving a licence from the Secretary of State of Canada, carry on mining operations in the Provinces of Saskatchewan and Alberta, the Northwest Territories, and the Yukon Territory, and shall be entitled to the privileges of a free miner, subject to the laws and regulations governing and affecting free miners.

61 Vic. c. 49, § 1.

**Copy of charter to be filed, and agent or manager in the Yukon to be designated.**

**270.** Every company desirous of obtaining such license as aforesaid shall first file in the office of the Secretary of State of Canada a certified copy of the charter or Act incorporating the company; and shall also designate the agent or manager within the Yukon Territory authorized to represent the company and to accept process in all suits and proceedings against the company for any liabilities incurred by the company therein.

61 Vic. c. 49, § 2.

**Notice of license. 271.** Notice of the issue of such license shall be published in the *Canada Gazette*.

61 Vic. c. 49, 4.

**Fees. 272.** The fees payable for the license shall, from time to time, be fixed by the Governor in Council.

61 Vic. c. 49, § 5.

**Returns. Penalty. 273.** Every company to which such license has been granted, when so required, shall make a return to the Secretary of State of all business done by it under such license, and in default of making the said return, the license may be cancelled.

61 Vic. c. 49, § 3.

### *Part VI. Supplement.*

**How debentures may be made payable. 274.** Any loan company subject to the legislative authority of the Parliament of Canada may, if authorized to issue debentures, make its debentures payable to order or to bearer or to registered holder or otherwise as the company deems advisable.

59 Vic. c. 11, § 1.

**Loan companies incorporated under R. S. C., cap. 119. 275.** Loan companies formed or incorporated under the provisions of the Companies Act, *The Revised Statutes of Canada*, chapter one hundred and nineteen, before the eleventh day of August, one thousand eight hundred and ninety-nine, remain and continue subject to the said provisions of the said Companies Act as heretofore amended, and Part III. of this Act shall not, as to any such loan company, in anywise affect any of the said provisions.

62 & 63 Vic. c. 41, § 46; 2 Edw. 7, c. 15, § 90.



*Schedule.**Form A. Application for Incorporation under the Companies Act.*

To the Honourable the Secretary of State of Canada:

The application of  
respectfully sheweth as follows:

The undersigned applicants are desirous of obtaining letters patent under the provisions of the first Part of the Companies Act, constituting your applicants and such others as may become shareholders in the company thereby created a body corporate and politic under the name of limited, or such other name as shall appear to you to be proper in the premises.

The undersigned have satisfied themselves and are assured that the proposed corporate name of the company under which incorporation is sought is not corporate name of any other known company incorporated or unincorporated or any name liable to be confounded therewith or otherwise on public grounds objectionable.

Your applicants are of the full age of twenty-one years.

The purposes for which incorporation is sought by the applicants are:

The chief place of business of the proposed company within Canada will be at  
in the county of in the Province of

The amount of the capital stock of the company is to be \$

The said stock is to be divided into shares of \$  
each.

The following are the names in full and the address and calling of each of the applicants with the amount of stock taken by each applicant respectively:

Applicant.	Amount of stock subscribed.

The said  
will be the first or provisional directors of the company.

A stock book has been opened and a memorandum of agreement by the applicants under seal in accordance with the statute has been executed in duplicate, one of the duplicates being transmitted herewith.

The undersigned therefore request that a charter may be granted constituting them and such other person as hereafter become shareholders in the company, a body corporate and politic for the purposes above set forth.

Signatures of Witnesses.	Signatures of Applicants.

Dated at this day of 19 .

(Note. — If any cash has been paid in on stock or if any property is intended to be accepted on account of stock it should be here stated.)

*Form B.*

(To be executed in duplicate; one duplicate to be transmitted with the application.)

The Company of (Limited).

*Memorandum of Agreement and Stock Book.*

We, the undersigned, do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of the first Part of the Companies Act, under the name of the Company of (Limited), or such other name as the Secretary of State may give to the company, with a capital of dollars, divided into shares of dollars each.

And we do hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such company to the said amounts.

In witness whereof we have signed.

Name of Subscriber.	Seal.	Amount of Subscription.	Date and Place of Subscription.		Residence of Subscriber.	Name of Witness.
			Date.	Place.		
		\$				

*Form C.*

Public notice is hereby given that under the first Part of the Companies Act, letters patent have been issued under the seal of the Secretary of State, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, incorporating (here state names, address, and calling of each corporator named in the letters patent) for the purpose of (here state the undertaking of the company, as set forth in the letters patent), by the name of (here state the name of the company as in the letters patent) with a total capital stock of \_\_\_\_\_ dollars divided into \_\_\_\_\_ shares of \_\_\_\_\_ dollars.

Dated at the office of the Secretary of State of Canada, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

A. B.,  
Secretary.

*Form D.*

Public notice is hereby given that under the first Part of the Companies Act, supplementary letters patent have been issued under the seal of the Secretary of State, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, whereby the undertaking of the company has been extended to include (here set out the other purposes or objects mentioned in the supplementary letters patent).

Dated at the office of the Secretary of State of Canada, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

A. B.,  
Secretary.

*Form E.*

Public notice is hereby given that under the first Part of the Companies Act, supplementary letters patent have been issued under the seal of the Secretary of State, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, whereby the total capital stock of (here state the name of the company) is increased (or reduced, as the case may be) from \_\_\_\_\_ dollars to \_\_\_\_\_ dollars.

Dated at the office of the Secretary of State of Canada, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

A. B.,  
Secretary.

## b) 7 & 8 Edw. 7, c. 16. An Act to amend the Companies Act (3d April, 1908).

- [1. Amends R. S. 1906, c. 79, § 2, and is there incorporated.]
- [2. Amends R. S. 1906, c. 79, § 69, and is there incorporated.]
- [3. Amends R. S. 1906, c. 79, § 76, and is there incorporated.]

## c) R. S. C. 1906, c. 144. An Act respecting Insolvent Banks, Insurance Companies, Loan Companies, Building Societies, and Trading Corporations.<sup>1)</sup>

**Short title.** 1. This Act may be cited as the *Winding-up Act*.

R. S., c. 129, § 1. The Act is intra vires the Dominion Parliament, being in the nature of an insolvent law, and applies to all corporate bodies of the nature mentioned in it, whether incor-

<sup>1)</sup> The references in the notes are to the Dominion Revised Statutes, 1886, and other Acts consolidated in 1906. The references (Imp.) are to the *Imperial Companies (Consolidation) Act, 1908*, (8 Edw. 7, c. 69.).

porated under a Provincial or Dominion Act. — *In re Clarke v. Union Fire Insurance Co.*, (1887), 14 O. R. 618; affirmed in (1889), 16 O. A. R. 161; affirmed sub nom., *Schoolbred v. Clarke*, (1890), 17 S. C. R. 265; *Dupont v. Compagnie de Moulin, etc.*, (1888), 11 Mont. L. N. 225. But see *In re Cramp Steel Co.*, (1908), 11 O. W. R. 133.

### *Interpretation.]*

**Definitions. 2.** (As amended by 9 & 10 Edw. 7, c. 62, § 1.) In this Act, unless the context otherwise requires: a) "Minister" means the Minister of Finance; b) "Company" includes any corporation subject to the provisions of this Act; c) "Insurance company" means a company carrying on either as a mutual or stock company, the business of insurance, whether life, fire, marine, ocean or inland marine, accident, guarantee or otherwise; d) "Trading company" means any company, except a railway or telegraph company, carrying on business similar to that carried on by apothecaries, auctioneers, bankers, brokers, brickmakers, builders, carpenters, carriers, cattle or sheep salesmen, coach proprietors, dyers, fullers, keepers of inns, taverns, hotels, saloons, or coffee houses, lime burners, livery stable keepers, market gardeners, millers, miners, packers, printers, quarrymen, sharebrokers, ship-owners, shipwrights, stockbrokers, stockjobbers, victuallers, warehousemen, wharfingers, persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail, or by persons who, either for themselves, or as agents or factors for others, seek their living by buying and selling or buying and letting for hire goods or commodities, or by the manufacture, workmanship, or the conversion of goods, or commodities, or trees; e) "Court" means; (i) In the province of Ontario, the High Court of Justice; (ii) In the province of Quebec, the Superior Court; (iii) In the province of Nova Scotia, the Supreme Court; (iv) In the province of New Brunswick, the Supreme Court; (v) In the province of Manitoba, the Court of King's Bench; (vi) In the province of British Columbia, the Supreme Court; (vii) In the province of Prince Edward Island, the Supreme Court; (viii) In the province of Saskatchewan, the Supreme Court; (ix) In the province of Alberta, the Supreme Court; (x) In the Northwest Territories, such court or magistrate or other judicial authority as is designated, from time to time, by proclamation of the Governor in Council, published in the *Canada Gazette*; and (xi) In the Yukon Territory, the Territorial Court; f) "Official Gazette" means the *Canada Gazette* and the gazette published under the authority of the government of the province where the proceedings for the winding-up of the business of the company are carried on, or used as the official means of communication between the lieutenant governor and the people, and if no such gazette is published, then it means any newspaper published in the province, which is designated by the court for publishing the notices required by this Act; g) "Contributory" means a person liable to contribute to the assets of a company under this Act; and, in all proceedings for determining the persons who are to be deemed contributories and in all proceedings prior to the final determination of such persons, it includes any person alleged to be a contributory; h) "Winding-up order" means an order granted by the court under this Act to wind up the business of the company, and includes any order granted by the court to bring within the provisions of this Act any company in liquidation or in process of being wound up; i) "Capital stock" includes a capital stock de jure or de facto; j) "Creditor" includes all persons having any claim against the company present or future, certain, ascertained, or contingent, for liquidated or unliquidated damages; and in all proceeding for determining the persons who are to be deemed creditors it shall include any person making any such claim.

R. S., c. 129, §§ 2, 33, 56, and 61; 62 & 63 Vic. c. 43, § 5; Imp. §§ 124, 285. The term "company" applies to all trading companies doing business in Canada though incorporated elsewhere. — *Allen v. Hanson* (1890), 18 S. C. R. 667; *Scott v. Hyde*, (1908), Q. R. 18 K. B. 138, affirming s. c. Q. R. 34 S. C. 432. See notes to § 6. The term "Court" means the court for the district where the main office of the company is located. — *Dupont v. Compagnie de Moulin, etc.* (1888), 11 Mont. L. N. 225. A Local Judge of the Supreme Court of British Columbia is not a "Court" within the meaning of this section, and has no jurisdiction to make a winding-up order. — *In re Kootenay Brewing Co.*, (1898), 7 B. C. R. 131; Cp. provisions §§ 109, 110, *infra*. Judicial officers named in the Act are not authorized to delegate powers. — *In re Queen City Refining Co.*, (1884), 10 O. P. R. 415. (Decided under subsection 2 of § 77, R. S. C. 1886, c. 129, now repealed.) As to when a Court of Chancery will interfere to oust the jurisdiction of an insolvent court, see *McNeil v. Reliance Insurance Co.*, (1879), 26 Gr. 567. The court will not allow its administration of assets to be interfered with by other proceedings affecting the estate. — *Clarke v. Union Fire Insurance Co.*, *Caston's case*, (1884), 10 O. P. R. 339. In *In re*



**Central Bank of Canada**, (1890), 20 O. R. 214, an injunction was granted to restrain proceedings in the Montreal Court, against a bank in the process of being wound up in Ontario under the Dominion Winding-up Act. As to the power of a Judge in Bankruptcy in England to enjoin proceedings in the High Court of Justice for Ontario, see *Maritime Bank v. Stewart*, (1889), 13 O. P. R. 86. The order for winding-up may be granted by a Judge in Chambers. — *In re Toronto Brass Co.*, (1898), 18 O. P. R. 248. The term "contributory" has been judicially interpreted in the following cases: *In Ex parte Bibby*, (1884), 1 B. C. R. (Pt. II) 94, a registered shareholder who had transferred his stock but whose name had not been removed from the list was held not liable as a contributory. A change made in the capital of a company after the shareholder subscribes for stock and without his knowledge or acquiescence, releases him from liability as a contributory. — *Stevens v. London Steel Works Co.*, (1887), 15 O. R. 75. For distinction between a debtor on a note made to the company and a contributory, see *In re Central Bank Canada*, (1888), 15 O. R. 625. *In re Thunder Hill Mining Co.*, (1895), 4 B. C. 61, a holder of shares purchased at discount was not released from liability as a contributory because of an irregularity in the issue of shares, said shareholder having failed to repudiate the transaction before the winding-up order was issued. *In re St. John Building Society*, (1897), 17 C. L. T. 346, it was ordered that the executor of a contributory should be placed on the list of contributories. After the issue of the winding-up order a shareholder cannot avoid his liability as a contributory by setting up defects or illegalities in the organization of the company; such grounds can only be taken upon direct proceedings at the instance of the Attorney-General. — *Common v. McArthur*, (1898), 29 S. C. R. 239. See also the following cases discussed in the note to § 51: *In re Standard Fire Insurance Co.*, (1884), 7 O. R. 448; affirmed in (1885), 12 O. A. R. 486; affirmed in (1886), 12 S. C. R. 644; *In re Cole and Canada Fire Insurance Co.*, (1884), 8 O. R. 92; *In re Queen City Refining Co.*, (1886), 10 O. R. 264; *In re London Speaker, etc., Co.*, (1889), 16 O. A. R. 508, at p. 513; *In re Central Bank v. Hogg*, (1890), 19 O. R. 7; *In re Owen Sound, etc., Co.*, (1891), 21 O. R. 349; *In re Union Fire Insurance Co., McCord's Case*, (1891), 21 O. R. 264; *In re Hess Manufacturing Co.*, (1894), 23 S. C. R. 644; *Hood v. Eden*, (1905), 36 S. C. R. 476.

**Company deemed insolvent, when.** 3. A company is deemed insolvent: a) If it is unable to pay its debts as they become due; b) If it calls a meeting of its creditors for the purpose of compounding with them; c) If it exhibits a statement showing its inability to meet its liabilities; d) If it has otherwise acknowledged its insolvency; e) If it assigns, removes, or disposes of, or attempts or is about to assign remove or dispose of, any of its property, with intent to defraud, defeat, or delay its creditors, or any of them; f) If, with such intent, it has procured its money, goods, chattels, land, or property to be seized, levied on, or taken, under or by any process of execution; g) If it has made any general conveyance or assignment of its property for the benefit of its creditors, or if, being unable to meet its liabilities in full, it makes any sale or conveyance of the whole or the main part of its stock in trade or assets, without the consent of its creditors, or without satisfying their claims; or, h) If it permits any execution issued against it, under which any of its goods, chattels, land, or property are seized, levied upon, or taken in execution, to remain unsatisfied till within four days of the time fixed by the sheriff or proper officer for the sale thereof, or for fifteen days after such seizure.

R. S., c. 129, § 5; Imp. § 129. A company is "unable to pay its debts" when it has not sufficient property subject to execution to pay all debts, if such property is sold under legal process at a sale fairly and reasonably conducted. — *Dominion Bank v. Cowan*, (1887), 14 O. R. 465. An allegation that a company is "insolvent and unable to pay petitioner's debts" is not a sufficient allegation within the meaning of subsection (a). — *In re Rapid City Farmers Elevator Co.*, (1894), 9 Man. R. 571. "Inability to meet its liabilities" means liabilities to creditors as distinguished from liabilities to shareholders. — *In re United Canneries*, (1903), 9 B. C. 528. In order to bring petition under subsection (d), there must be something actively done by the company to acknowledge its insolvency. The non-appearance of a company to oppose a petition for a winding-up order is not an acknowledgment of insolvency sufficient to bring it within this subsection. — *In re Lake Winnipeg Transportation Co.*, (1891), 7 Man. R. 255. Neither does a company acknowledge its insolvency by allowing judgment to go against it by default. — *In re Qu'Appelle Valley Co.*, (1888), 5 Man. R. 160. The acknowledgment must be an act of the company; a statement made by a shareholder is insufficient. As to whether the president or general manager of a company can make a statement acknowledging the company's insolvency, see *In re Briton Medical Association* (1886), 11 O. R. 478. "It is submitted that the acknowledgment must in effect amount to a statement by the company through its board of directors or other proper channel, that it is insolvent." — *Parker and Clarke, Company Law*, p. 351. Where a petitioner, who was president of the company as well as a large creditor, stated in his affidavit that he knew the company to be unable to pay its debts in full, but gave no comparative statement of its assets and liabilities, it was held not sufficient evidence of insolvency. — *In re Lake Winnipeg Transportation Co.*, (1891), 7 Man. R. 255. To enable a company to be wound up it is not sufficient for the company to appear by counsel and admit its insolvency. Facts showing insolvency must be disclosed in the material on which the petition is based. — *In re Grundy Stone Co.*, (1904), 7 O. L. R. 252. See also *In re William Lamb Manufacturing Co.*, (1900), 32 O. R. 243. The

acknowledgment must be stated in the petition, if the petitioner intends to rely upon subsection(d). — In re Briton Medical Association, (1886), 11 O. R. 478. A company failing to comply with a demand made under § 4, is to be deemed insolvent. — In re Cushing Sulphite Fibre Co., (1905), 37 N. B. R. 254. Authorities are in conflict as to whether or not a creditor who seeks to shew insolvency within the meaning of subsection (a), must first shew that there has been a demand, and failure to comply with same as provided under § 4 of this Act. In Manitoba the affirmative of this proposition has been held. — In re Qu'Appelle Valley Co., (1888), 5 Man. R. 160; In re Rapid City Farmers' Elevator Co., 9 Man. R. 574. A later case in Ontario follows this construction. — In re Ewart Carriage Works, (1904), 8 O. L. R. 527. A contrary decision was come to in MacKay v. L'Association Coloniale, (1884), 13 Rev. Leg. 383. Parker and Clarke believe that the decision in In re Ewart, *supra*, represents the better view. — *Company Law*, p. 350. In re Rapid City Farmers' Elevator Co., *supra*, the court distinguished the case from In re Flag Staff Mining Co., L. R. 20 Eq. 268, on the ground that the provisions of § 4 were not found in the British Act. See also In re Briton Medical Association, (1886), 11 O. R. 478; In re Abbott Mitchell, etc., Co., (1901), 2 O. L. R. 143. If the petitioner relies upon subsection (e) the petition must state the facts which constitute the fraud charged. It is not sufficient to allege that the assignment was made to defraud, defeat, or delay creditors. See In re Qu'Appelle Valley Co., (1888), 5 Man. R. 160, at p. 164. A conveyance of the main part of a company's assets without consent of the creditors, and without satisfying their claims is sufficient grounds under subsection (g), for a winding-up order. — In re Qu'Appelle Valley Co., *supra*. Where an assignment for the benefit of creditors has been made, a creditor of the company is not entitled, as of course, to a winding-up order; notwithstanding the assignment, the Court may still exercise its discretion in granting or refusing the order. — In re Strathy Wire Fence Co., (1904), 8 O. L. R. 186. "If the petition does not allege an assignment for the benefit of creditors, and the company executes an assignment between the time of service of the petition and the hearing, the solicitor cannot avail himself of the assignment and, unless other grounds are shewn upon which an order can be made, the petition will be dismissed with costs. — In re Churchill Manufacturing Co., (unreported), Meredith, C. J. Dec. 1907." — Parker and Clarke, *Company Law*, 352. Under subsection (h), it was held, in Manitoba, that a company is not insolvent within the meaning of the Act because an execution has been returned nulla bona. — In re Rapid City Farmers' Elevator Co., (1894), 9 Man. R. 574, following In re Qu'Appelle Valley Co., (1888), 5 Man. R. 160. It must, in addition, be proved that the company had permitted execution to remain unsatisfied till within four days of the time fixed by the sheriff for the sale. In computing the time under this subsection, the day fixed for the sale is exclusive. Thus where the writ was in the sheriff's hands on the 30th December and the sale was fixed for the 3d January, it was held that the company was insolvent within the meaning of the Act. — In re Lake Winnipeg Trading Co., (1891), 7 Man. R. 255. The provisions of this section are exclusive, and a petitioner for a winding-up order must strictly prove the existence of one or more of the circumstances therein set forth. — In re Rapid City Farmers' Elevator Co., (1894), 9 Man. R. 574.

**Company deemed unable to pay its debts. 4.** A company is deemed to be unable to pay its debts as they become due, whenever a creditor, to whom the company is indebted in a sum exceeding two hundred dollars then due has served on the company, in the manner in which process may legally be served on it in the place where service is made, a demand in writing, requiring the company to pay the sum so due, and the company has, for ninety days, in the case of a bank, and for sixty days in all other cases, next succeeding the service of the demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor.

R. S., c. 129, § 6; Imp. § 130. See notes § 3, *supra*. § 12 uses the term "creditor" only and not, as does the above section, a creditor whose debt is "then due." As to the importance of this distinction, see In re Atlas Canning Co., (1897), 5 B. C. 661. It is not sufficient to shew that several verbal demands or demands by letter have been made. The demand must be served on the company in the manner in which process may be legally served on it. — In re Rapid City Elevator Co., (1894), 9 Man. R. 574. As to form of demand, see also In re Abbott Mitchell, etc., Co., (1901), 2 O. L. R. 143. Where a demand has been made under this section, and the time for payment has elapsed, the demands not having been complied with, and no reason given why payment is not made, the company must be deemed insolvent within the meaning of the Act. — In re Cushing Sulphite Fibre Co., (1905), 37 N. B. 254. But non-compliance with a demand when the debt is not yet due, is not evidence of insolvency. — In re Briton Medical Association, (1886), 11 O. R. 478. An assignee of a debt who petitions under this section must prove, not only that the date of the judgment, but also that the assignment was prior in date to the demand. — In re Rapid City Farmer's Elevator Co., (1895), 10 Man. R. 681. A secured creditor can make a demand and he is not bound to value his security (under § 76) in the petition. — In re Cushing Sulphite Fibre Co., (1905), 37 N. B. 254.

**Commencement of winding-up. 5.** The winding-up of the business of a company shall be deemed to commence at the time of the service of the notice of presentation of the petition for winding-up.

R. S., c. 129, § 7; Imp. § 139. Under the English Act the time named for the commencement of the winding-up is the presentation of the petition. Therefore the English decisions on this



subject are not in point. The Court will not interfere with a voluntary winding-up of the company by its shareholders, and order a compulsory liquidation, unless the rights of the petitioners will be prejudiced by the voluntary winding-up. — *In re Oro Fino Mines*, (1900), 7 B. C. 388. For other cases of voluntary winding-up, see *In re Union Fire Insurance Co.*, (1882), 7 O. A. R. 783; *In re Ontario Forge and Bolt Co.*, (1894), 25 O. R. 407; *In re Maple Leaf Dairy Co.*, (1901), 2 O. L. R. 590.

### *Application.*

**Application. 6.** This Act applies to all corporations incorporated by or under the authority of an Act of the Parliament of Canada, or by or under the authority of any Act of the late province of Canada, or of the province of Nova Scotia, New Brunswick, British Columbia or Prince Edward Island, and whose incorporation and the affairs whereof are subject to the legislative authority of the Parliament of Canada; and also to incorporated banks, savings banks, incorporated insurance companies, loan companies having borrowing powers, building societies having a capital stock, and incorporated trading companies doing business in Canada where-soever incorporated and: a) Which are insolvent; or b) Which are in liquidation or in process of being wound up, and, on petition by any of their shareholders or creditors, assignees or liquidators ask to be brought under the provisions of this Act.

R. S., c. 129, § 3; 52 Vic., c. 32, § 3. See notes § 1, *supra*. A company, though incorporated by a Provincial Legislature, may, if insolvent, be wound up under this Act. — *In re Eldorado Union Store Co.*, (1886), 18 N. S. 514. A company incorporated under the Companies Act of Ontario, and carrying on business in Ontario, is "doing business in Canada" within the meaning of this section. — *In re Ontario Forge and Bolt Co.*, (1894), 25 O. R. 407. "Clauses (a) and (b) are only applicable to incorporated trading companies doing business in Canada mentioned in the section. They do not refer to all corporations that are referred to in section 6." — *Per Wetmore, C. J.*, in *In re Nelson Ford Lumber Co.*, (1908), 9 West L. R. 438. *Seem*, the Ontario Winding-up Act does not apply to a company incorporated in Ontario, where an application to wind up is made on the ground of insolvency, because local legislatures have no jurisdiction in matters of bankruptcy and insolvency. — *In re Iron Clay Brick Manufacturing Co.*, *Turner's Case* (1889), 19 O. R. 113. See also *In re Atlas Loan Co.*, *Green's Case*, (1904), 3 O. W. R. 604. The Dominion Parliament can legislate respecting foreign companies doing business in Canada. Thus, where a foreign company has been ordered to be wound up by a foreign court, and the company is doing business in Canada and has assets there, a Canadian Court can order the company to be wound up, so far as its Canadian assets are concerned. In such a case, the Winding-up Act merely seeks to regulate the Canadian property of the foreign company and to protect the rights of the creditors of such company in its property in Canada. — *Allen v. Hanson*, (1880), 18 S. C. R. 667, at p. 673. In *In re Briton Medical Association*, (1886), 12 O. R. 441, Canadian policy-holders were granted an order for distribution of the deposit made by a foreign company with the Minister of Finance, notwithstanding that proceedings to wind up the company were pending before an English Court. The Act is retroactive in the sense of applying to companies which became insolvent before the date of the Act. — *Wyld v. Hamilton Mutual Insurance Co.*, (1883), 6 O. R. 118; *In re Union Fire Insurance Co.*, (1886), 13 O. A. R. 268; but see *Ings v. Bank of Prince Edward Island*, (1885), 11 S. C. R. 265.

**Certain corporations excepted. 7.** This Act does not apply to building societies which have not a capital stock or to railway or telegraph companies.

R. S., c. 129, § 3; 52 Vic. c. 32, § 3.

## *Part I. General.*

### *Limitation of Part.*

**Subject to Part II. 8.** In the case of a bank other than a savings bank the provisions of this Part are subject to the provisions of Part II. of this Act.

R. S., c. 129, §§ 4, 97. An insolvent bank must be wound up in accordance with the preliminary provisions contained in §§ 149—159, of Part II, *infra*. — *Mott v. Bank of Nova Scotia*, (1887), 14 S. C. R. 650; see also *In re Central Bank*, (1887), 15 O. R. 309.

**Subject to Part III. 9.** In the case of life insurance companies, and of insurance companies doing life insurance and other insurance, in so far as relates to the life insurance business of such companies, the provisions of this Part are subject to the provisions of Part III. of this Act.

R. S., c. 129, §§ 4, 105.

**Subject to Part IV. 10.** In the case of insurance companies other than life insurance companies, and of insurance companies doing life insurance and other insurance, in so far as relates to such other insurance, the provisions of this Part are subject to the provisions of Part IV. of this Act.

R. S., c. 129, §§ 4, 115.



*Winding-up order.*

**In what cases winding-up order may be made. 11.** The Court may make a winding-up order: a) Where the period, if any, fixed for the duration of the company by the Act, charter, or instrument of incorporation has expired; or where the event, if any, has occurred, upon the occurrence of which it is provided by the Act or charter or instrument of incorporation that the company is to be dissolved; b) Where the company at a special meeting of shareholders called for the purpose has passed a resolution requiring the company to be wound up; c) When the company is insolvent; d) When the capital stock of the company is impaired to the extent of twenty-five per centum thereof, and when it is shown to the satisfaction of the Court that the lost capital will not likely be restored within one year; or e) When the Court is of opinion that for any other reason it is just and equitable that the company should be wound up.

52 Vic. c. 32, § 4; Imp. § 129. For limitations on this section, see § 12, *infra*. A valid winding-up order must contain the appointment of a liquidator. — In re Union Fire Insurance Co., (1886) 13 O. A. R. 268. After the issue of the order for winding-up, a shareholder cannot avoid his liability as a contributory by setting up defects or irregularities in the organization of the company. — Common v. McArthur, (1898), 29 S. R. C. 239. An order for compulsory winding-up may be made, notwithstanding a resolution has been passed by the shareholders providing for a voluntary winding-up. — In re Union Fire Insurance Co., (1882), 7 O. A. R. 783; but see In re Oro Fino Mines, (1900), 7 B. C. 388, and cases in the note to § 5, *supra*. In In re Lamb Manufacturing Co., (1900), 32 O. R. 243, it was held that, where the insolvency of the company was admitted, under subsection (c) of this section, the Court had no discretion, under § 14 of this Act, to refuse to grant a winding-up order on the petition of a creditor who had a substantial interest in the estate. But this case has probably been overruled by later cases which give to the Court wide discretion in granting or withholding an order, even when the company is admittedly insolvent. For a discussion of this question, see notes § 14, *infra*.

*Application for order.*

**By whom made. 12.** The application for such winding-up order may, in the cases mentioned in paragraphs (a) and (b) of the last preceding section be made by the company or by a shareholder; and in the case mentioned in paragraph (c) of the last preceding section by the company or by a creditor for the sum of at least two hundred dollars, or, except in the case of banks and insurance corporations, by a shareholder holding shares in the capital stock of the company to the amount of at least five hundred dollars, and, in the other cases mentioned in the said section, by a shareholder holding shares in the capital stock of the company to the amount of at least five hundred dollars.

R. S., c. 129, § 8; 52 Vic. c. 32, § 5; 62 & 63 Vic. c. 43, § 4, Imp. § 137. See notes § 11, *supra*, and § 14, *infra*. Cp. the wording of this section and § 4, *supra*. A creditor whose debt is not due is a good petitioning creditor for winding-up when the company has become insolvent. — In re Atlas Canning Co., (1897), 5 B. C. 661; but where the creditors of a company had agreed to extend the time for payment of their debts, those creditors who had executed the deed of extension were estopped from presenting a winding-up petition until the period of extension had expired. — *Ibid.* A subsequent execution creditor may file a petition for a winding-up order. — In re Lake Winnipeg Trading Co., (1891), 7 Man. R. 255. The fact that a creditor is entitled to a lien for the full amount of his claim, does not disqualify him from being a petitioner. — In re Strathy Wire Fence Co., (1904), 8 O. L. R. 186, at pp. 191, 192. The assignor of a debt should join in the petition of his assignee. — In re Peoples Loan & Deposit Co., (1906), 7 O.W.R. 253, and cases cited p. 263. It is not permissible for various creditors, each having a claim of less than \$ 200, to assign their claims against the company to a single person in order that the petitioner may have a claim in excess of \$ 200. — *Ibid.* The petition must allege facts which justify a winding-up order; it is not enough that a sufficient cause be shown in evidence. Hence, the omission to allege essential facts in the petition cannot be supplied by circumstances which have arisen *ex post facto*. — In re Kootenay Brewing Co., (1898), 6 B. C. 112. Only those creditors of a company who have entered appearances need be served with notice of the application of the liquidator for his discharge. — In re McDougall Distillery Co., (1898), 18 C. L. T. 421. A petitioner for a winding-up order may discontinue proceedings on settlement of his claim, and other creditors who have not themselves petitioned, are not entitled to be substituted for such petitioner for the purpose of continuing the proceedings. — Doyle v. Atlas Canning Co., (1897), 5 B. C. 279. But where the other creditors have themselves petitioned, an order for continuance should be granted. — In re Joseph Hall Manufacturing Co., (1884), 10 O. P. R. 485.

**How and where made; notice of application. 13.** Such application may be made by petition to the Court in the Province where the head office of the company is situated, or, if there is no head office in Canada, then in the Province where its chief place, or one of its chief places of business is situated. 2. Except in cases

where such application is made by the company, four days' notice of the application shall be given to the company before the making of the same.

R. S., c. 129, § 8; 52 Vic. c. 32, § 6. There is no provision in the Act relating to the affidavit. In a late English case, *In re African Farms*, (1906) 1 Ch. 640, it was held that the affidavit can be made by the petitioner's agent or solicitor if he has knowledge of the facts. Parker and Clarke believe that this case would be followed in Canada. — *Company Law*, p. 363. Filing and service of the petition is regulated by the Consolidated Rules of Practice; see also Parker and Clarke, *Company Law* p. 364. The petition may be presented to a Judge in Chambers § 109, *infra*. An application for a liquidator without previous notice to creditors, contributors, shareholders, or members, is null and void. — *Stinson v. The North West Cattle Co.*, (1902), Q. R. 14 K. B. 279. A subsequent execution creditor may file a petition. — *In re Lake Winnipeg Trading Co.*, (1891), 7 Man. R. 255. *In re Cushing Sulphite Fibre Co.*, (1905), 37 N. B. 254, a holder of bonds, the interest on which was overdue, was granted a petition for winding-up. As to sufficiency of notice of application, see *In re Maritime Wrapper Co.*, (1902), 35 N. B. 682; as to requisites of the petition, see *In re Eldorado Stove Co.*, (1886), 18 N. S. 514. Service of a petition for a winding-up order on an assignee for the benefit of creditors of a company, is not service upon the company as required by this section. — *In re Rodney Casket Co.*, (1906), 12 O. L. R. 409. Service of a petition on the vice-president of a company, when it was not shewn that the president could not be served, was held not good service on the company. — *In re Kearn's Ink and Wax Co.*, Anglin J. (1907), (unreported), cited by Parker and Clarke, *Company Law*, p. 364. The petition may be served out of the jurisdiction. — § 111, *infra*.

**Power of Court on application.** 14. The Court may, on application for a winding-up order, make the order applied for, dismiss the petition with or without costs, adjourn the hearing conditionally or unconditionally, or make any interim or other order that it deems just.

R. S., c. 129, § 9; Imp. § 141. See notes § 11, *supra*. The Court, under this section, has discretion to grant or withhold a winding-up order. — *Wakefield Rattan Co. v. Hamilton Whip Co.*, (1893), 24 O. R. 107. A later case in Ontario declined to follow the case above cited, holding that where the insolvency of the company was admitted, the Court had no discretion to refuse a winding-up order on the petition of a creditor who had a substantial interest. — *In re Lamb Manufacturing Co.*, (1900), 32 O. R. 243. Still later decisions, however, approving the Rattan case, *supra*, have restored discretionary power to the Court. — *In re Maple Leaf Dairy Co.*, (1901), 2 O. L. R. 590; *In re Strathy Wire Fence Co.*, (1904), 8 O. L. R. 186. "It can now be taken as settled that, on an application for a winding-up order, the Court has wide discretion to grant or withhold the order, and that the Court will examine into the case and, if possible, the wishes of the creditors will be observed." — Parker and Clarke, *Company Law*, p. 373. Creditors may show cause against the granting of a winding-up order, or may appear and assist the petitioning creditors and are entitled to costs of so doing. — *In re Alpha Oil Co.*, (1887), 12 O. P. R. 298; *In re Lake Winnipeg Transportation Co.*, (1891), 7 Man. R. 255. For cases on costs of the petition, see *In re Albion Iron Works Co.*, (1904), 24 C. L. T. (Occ. N.) 300; *In re Enterprise Hosiery Co.*, (1904), 4 O. W. R. 56; *In re Estates Limited*, (1904), 8 O. L. R. 564; *In re Commercial Bank of Manitoba*, (1893), 9 Man. R. 342; 13 C. L. T. (Occ. N.) 381.

**Proceedings may be adjourned.** 15. If the company opposes the application on the ground that it has not become insolvent, or that its suspension or default was only temporary, and was not caused by any deficiency in its assets, or that the capital stock is not impaired to the extent aforesaid, or that such impairment does not endanger the capacity of the company to pay its debts in full, or that there is a probability that the lost capital will be restored within a year or within a reasonable time thereafter, and shows reasonable cause for believing that such opposition is well founded, the Court, in its discretion, may, from time to time, adjourn proceedings upon such application, for a time not exceeding six months from the date of the application, and may order an accountant or other person to inquire into the affairs of the company, and to report thereon within a period not exceeding thirty days from the date of such order.

R. S., c. 129, § 10; 52 Vic. c. 32, § 8; Imp. § 141.

**Duty of company and its officers if inquiry is ordered.** 16. Upon the service on the company of an order made under the last preceding section, for an inquiry into the affairs of the company, the president, directors, officers, and employees of the company and every other person, shall respectively exhibit to the accountant or other person named for the purpose of making such inquiry, the books of account of the company, and all inventories, papers, and vouchers referring to the business of the company or of any person therewith, which are in his or their possession, custody, or control, respectively; and they shall also respectively give all such information as is required by such accountant or other person as aforesaid, in order to form a just estimate of the affairs of the company.



R. S., c. 129, § 11; Imp. § 109. See penalty provided in § 141, *infra*, for refusal by officer of the company to give information.

**Power of the Court upon report of inquiry.** 17. Upon receiving the report of the accountant or person ordered to inquire into the affairs of the company, and after hearing such shareholders or creditors of the company as desire to be heard thereon, the Court may either refuse the application or make the winding-up order.

R. S., c. 129, § 12; Imp. § 141.

#### *Staying proceedings.*

**Actions against company may be stayed.** 18. The Court may, upon the application of the company, or of any creditor or contributory, at any time after the presentation of a petition for a winding-up order and before making the order, restrain further proceedings in any action, suit, or proceeding against the company, upon such terms as the Court thinks fit.

R. S., c. 129, § 13; Imp. § 140. Usually an application for an order restraining proceedings is made on notice to the plaintiff in the action, but, in a proper case, an order may be made on an *ex parte* application. — *In re Tobique Gypsum Co.*, (1903), 6 O. L. R. 515, at p. 518. A restraining order to prevent an execution by a judgment creditor, of process against the company, can only be applied for after presentation of a petition, and such petition can only be presented after four days' notice. — *In re Eldorado Union Store Co.*, (1886), 18 N. S. 514. Jurisdiction under this section extends to restraining actions or proceedings beyond the ordinary territorial jurisdiction of the Court; but where the sheriff had proceeded with the sale of the company's land under execution, and had executed a deed for the same to the purchaser, it was held that the Court had, under this Act, no jurisdiction to make an order summarily declaring the sale void. — *In re Tobique Gypsum Co.*, (1903), 6 O. L. R. 515. But see *Lake Superior Copper Co.*, *In re Plummer*, (1885), 9 O. R. 277, where an application for an injunction restraining the levy under an attachment in the State of Michigan, was refused. See also *Clarke v. Union Fire Insurance Co.*, (1884), 10 O. P. R. 339. Cp. provisions of § 22, *infra*.

**Court may stay winding-up proceedings.** 19. The Court may, upon the application of any creditor or contributory, at any time after the winding-up order is made, and upon proof, to the satisfaction of the Court, that all proceedings in relation to the winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks fit.

R. S., c. 129, § 18; Imp. § 144. Notwithstanding that this section gives no power to the Court to stay proceedings upon an application by the company, in *In re Boehmer Erb Co.*, (unreported) Nov. 1907, cited by Parker and Clarke, *Company Law*, p. 385, Teetzel, J., stayed proceedings upon application of the company for the purpose of allowing the company to settle with creditors upon the representation that all debts would be promptly paid. A contributory petitioning to set aside a winding-up order, was required to give security for the costs of the company and creditors who opposed the petition, where it appeared that petitioner had only a nominal interest as holder of stock and was merely acting in the interests of other persons who lived out of the jurisdiction, and who had indemnified him as to costs. — *In re Rainy Lake Lumber Co.*, (1886), 11 O. P. R. 314. Under this section, the winding-up may be altogether stayed; but Parker and Clarke believe that such an order would not be made unless all creditors were paid in full. — *Company Law*, p. 385.

#### *Effect of winding-up order.*

**Company to cease business.** 20. The company, from the time of the making of the winding-up order, shall cease to carry on its business, except in so far as is, in the opinion of the liquidator, required for the beneficial winding-up thereof; but the corporate state and all the corporate powers of the company, notwithstanding it is otherwise provided by the Act, charter, or instrument of incorporation, shall continue until the affairs of the company are wound up.

R. S., c. 129, § 15; Imp. § 184. See § 23, *infra*, for the effect of execution levied after the winding-up order. See § 34, *infra*, for powers of liquidators. Cp. § 5, *supra*, prescribing the time when the winding-up commences. After a winding-up order, judgment recovered against a company is void. — *Keating v. Graham*, (1895), 26 O. R. 361; *Shaver v. Cotton*, (1896), 23 O. A. R. 426; After a winding-up order, property cannot be sold for taxes. — *Commissaires d'Ecole v. Montreal Abbatoir*, (1887), M. L. R. 3 Q. B. 116. After a winding-up order, power to collect assets of the company is vested solely in the liquidator. — *Shaver v. Cotton*, (1896), 23 O. A. R. 426; *Bank of Hochelaga v. Garth*, (1885), M. L. R. 2 S. C. 201. An undertaking by a provisional liquidator to satisfy a landlord's claim for preferential payment for overdue rent after service of notice, is void unless permission of the Court is first obtained. — *Inches v. Hamilton Tribune Co.*, (1884), 10 O. P. R. 409. *In Trusts and Guarantee Co. v. Munroe*, (1909), 13 O. W. R. 534, a liquidator of an insolvent company was allowed to recover money paid by the company to the defendant after notice of motion for a winding-up order had been served on the company.



**Transfer of shares void. 21.** All transfers of shares, except transfers made to or with the sanction of the liquidator, under the authority of the Court, and every alteration in the status of the members of the company, after the commencement of such winding-up, shall be void.

R. S., c. 129, §§ 15, § 205. Cp. § 5, *supra*, prescribing the time when winding-up commences. *Semble*, transfers of shares made after service of the notice of the petition, are void only if the order is subsequently made upon that petition. — Parker and Clarke, *Company Law*, p. 388.

**After winding-up order, actions against company stayed. 22.** After the winding-up order is made, no suit, action, or other proceeding shall be proceeded with or commenced against the company, except with the leave of the Court and subject to such terms as the Court imposes.

R. S., c. 129, § 16; Imp. 142. §§ 22 and 22 should be read together, and § 23 must be held as only avoiding attachments, sequestrations, distresses, or executions, where leave to put them in force has not been granted under § 23. — White, *Canadian Company Law*, p. 430, citing *In re Lake Winnipeg Transportation Co.*, (1891), 7 Man. R. 602, 604; *In re Enterprise Brewing & Malting Co.*, (1891), 8 Man. R. 424. *In re British Columbia Tie Co.*, (1908), 9 West. L. R., an application by a liquidator for an order, under this section, restraining mortgages in possession from selling lands mortgaged by the company, was refused. "To entitle a plaintiff to an order allowing him to proceed with the action, he must shew such special or unusual circumstances as make it reasonably clear that the matters in question cannot be satisfactorily dealt with by the tribunal specially provided for in the winding-up proceedings." — Per Teetzel J. in *Titterton v. Distributors Co.*, (1906), 8 O. W. R. 328. Where claimant did not seek to enforce any rights against the company, but rather to ascertain his rights, leave to proceed was granted. — *In re Lake Winnipeg Trading Co.*, (1891), 7 Man. R. 602. In the above case, leave was granted to a servant of the company to sue the company for wages so that he would be able to sue the directors under the Manitoba Companies Act, after a return of *nulla bona*. *In re Regina Windmill & Pump Co.*, (1909), 10 West. L. R. 65, an application by the liquidator for an order directing the sheriff to hand over goods in his possession by virtue of a levy under an execution before winding-up proceedings were commenced, was refused. *In re British Columbia, etc., Co.*, *Colon v. "The Rustler,"* (1909), 10 West. L. R. 370, an application was granted by the Supreme Court of British Columbia allowing plaintiff leave to proceed with his action on the Admiralty side of the Exchequer Court of Canada against a ship, notwithstanding the appointment of a liquidator in a winding-up proceeding against the company owning the ship.

**Execution, etc., against company void. 23.** Every attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the making of the winding-up order shall be void.

R. S., c. 129, § 17; Imp. § 211. See notes §§ 20 and 22, *supra*. The Court will not allow its administration of assets to be interfered with by other proceedings affecting the estate; creditors of such estate must proceed through the Master. — *Clarke v. Union Fire Insurance Co.*, (1884), 10 O. P. R. 339; see also *Graham v. Casselman*, (1883), 4 Q. R. (S. C.) 91. Where a claim was made for arrears of taxes against a company in liquidation, and it was shewn that, before the date of the winding-up order, the taxes might have been, but were not, recovered by distress, the claim was disallowed. — *In re Ottawa Porcelain, etc., Co.*, (1900), 31 O. R. 679; see also *Commissaires d'Ecole v. Montreal Abbatoir*, (1887), M. L. R. 3 Q. B. 116.

#### *Appointment of liquidators.*

**Liquidator to be appointed. 24.** The Court in making the winding-up order, may appoint a liquidator or more than one liquidator of the estate and effects of the company.

R. S., c. 129, § 20; Imp. § 149 (1). See notes §§ 27 and 29, *infra*, Power of appointment of liquidators cannot be delegated. — *In re Union Fire Insurance Co.*, (1886), 13 O. A. R. 268; affirmed in 14 S. C. R. 624. Cp. Act 45 Vic. c. 23, where the liquidator "must" be appointed by the winding-up order. In the present section the word used is "may." Such appointment must be made on notice to creditors, shareholders, and members. — § 27, *infra*; *Schoolbred v. Clarke*, *In re Union Fire Insurance Co.*, (1890), 17 S. C. R. 265 at p. 272. Usually a provisional liquidator is first appointed (§ 26) and, after notice, a permanent liquidator is substituted. — *Schoolbred v. Clarke*, *supra*; see also *In re Guelph Linseed Oil Co.*, (1903), 2 O. W. R. 1151. In the appointment of a liquidator, the choice of the creditors should be adopted; but preference should be given to one who is neither a creditor nor a shareholder, since it is desirable that liquidators should be disinterested persons. — *In re Central Bank of Canada*, (1887), 15 O. R. 309. In a contest for the appointment of a liquidator, it is desirable to follow the English rule, i. e., preference should be given to the nominee who will have an immediate concern in realization of the assets. — *In re Alpha Oil Co.*, (1887), 12 O. P. R. 298. Where there were two petitioners for a winding-up order against one company, although orders were made under both petitions, control of the proceedings was given to a later petitioner, a creditor for money paid, in preference to an earlier one shewn to be an employee of the company. — *In re Estates Limited*, (1904), 8 O. L. R. 564; see also *Alpha Oil Co. v. Donnelly*, (1888), 12 O. P. R. 515; *Wakefield Rattan Co. v. Hamilton Whip Co.*, (1893), 24 O. R. 107. *In re Commercial Bank of Manitoba*, (1893), 9 Man. R.

342, the Court declined to appoint as liquidator a former officer of the bank who was largely indebted to the bank, though such indebtedness was fully secured. In the appointment of liquidators the Court, though confined to those nominated at the meeting of creditors and shareholders, is not bound by the result of the voting, and ought to exercise its own discretion in the selection of liquidators. — In re Commercial Bank of Manitoba, *supra*. Where all the creditors of an insolvent company had agreed upon and recommended the appointment of a certain person as liquidator, it was held that the fact that he was a shareholder in the company, was not a valid objection to his appointment. — In re Westminster Gas Co., (1897), 5 B. C. 618. Canvassing for votes by a liquidator will be discountenanced by the Court. — In re Commercial Bank of Manitoba, *supra*. The liquidator represents all classes of creditors in the winding-up. — In re Farmer's Loan and Savings Co., (1903), 2 O. W. R. 854. For a discussion of scale of remuneration of liquidators, see White, *Canadian Company Law*, p. 436.

**Acting liquidator. 25.** If more than one liquidator is appointed, the Court may declare whether any act to be done by a liquidator is to be done by all or any one or more of the liquidators.

R. S., c. 129, § 23; Imp. § 149 (4). See notes § 27, *infra*. If more than one liquidator is appointed, and no order made under this section, it is not proper for one of them to delegate powers or duties to another. — In re Central Bank of Canada, (1887), 15 O. R. 309.

**Additional liquidators. 26.** The Court may, if it thinks fit, after the appointment of one or more liquidators, appoint an additional liquidator or liquidators.

R. S., c. 129, § 22; Imp. § 149. See notes § 27, *infra*.

**Notice previous to appointment. 27.** No liquidator aforesaid shall be appointed unless a previous notice is given to the creditors, contributories, and shareholders or members; and the Court shall by order direct the manner and form in which such notice shall be given and the length of such notice.

R. S., c. 129, § 20; Imp. § 201. See notes § 24, *supra*. It is a substantial objection to an order for the appointment of a liquidator, that such order was made without notice to creditors, contributories, shareholders, or members of the company. — Schoolbred v. Union Fire Insurance Co., (1886), 14 S. C. R. 624, reversing In re Union Fire Insurance Co., (1886), 13 O. A. R. 268, and In re Clarke v. Union Fire Insurance Co., (1885), 10 O. R. 489. See also In re Guelph Linseed Oil Co., (1903), 2 O. W. R. 1151. § 124, *infra*, does not extend to dispensing with notice as required by this section. — Stimson v. Northwest Cattle Co., (1902), Q. R. 14 K. B. 279. An appeal to a Judge in Court lies from an order of the Master appointing a permanent liquidator. — Markle v. Ross, (1889), 13 O. P. R. 135. Further appeals governed by § 101, *infra*.

**Security. 28.** The Court shall also determine what security shall be given by a liquidator on his appointment.

R. S., c. 129, § 24; Imp. § 149 (3). The security need not be fixed by the winding-up order; it may be left to the Master. — Schoolbred v. Clarke, (1890), 17 S. C. R. 265. For practice in fixing security given by the liquidator, see Parker and Clarke, *Company Law*, p. 403.

**Provisional liquidator. 29.** The Court may on the presentation of the petition for a winding-up order or at any time thereafter and before the first appointment of a liquidator, appoint provisionally a liquidator of the estate and effects of the company and may limit and restrict his powers by the order appointing him.

R. S., c. 129, § 26; 52 Vic. c. 32, § 12; Imp. § 149 (2). See notes §§ 24 and 27, *supra*. The Act requires no notice of the appointment of provisional liquidators whereas notice of appointment of permanent liquidators must be given. — § 27. For an enumeration of powers and duties of a provisional liquidator, see Parker and Clarke, *Company Law*, p. 407. See also In re Guelph Linseed Oil Co., (1903), 2 O. W. R. 1151.

**Incorporated company may be appointed. 30.** (As amended by 6 & 7 Edw. 7, c. 51, § 2.) 1. An incorporated company may be appointed liquidator to the goods and effects of a company under this Act; and if an incorporated company is so appointed, it may act through one or more of its principal officers designated by the Court. 2. Where under the laws of any Province a trust company is accepted by the Courts of such Province, and is permitted to act, as administrator, assignee, or curator without giving security, such trust company may be appointed liquidator of a company under this Act, without giving security.

R. S., c. 129, § 21. In Forsythe v. Bank of Nova Scotia, In re Bank of Liverpool, (1890), 18 S. C. R. 707, a bank was appointed liquidator of another insolvent bank.

**Powers of directors to cease. 31.** Upon the appointment of the liquidator all the powers of the directors shall cease, except in so far as the Court or the liquidator sanctions the continuance of such powers.

R. S., c. 129, § 34; Imp. § 151. Cp. § 20, *supra*. Note that this section provides nothing as to the powers of the company's officers; only directors are mentioned. Parker and Clarke believe that, since, under § 20, the company must cease to carry on business from the time of the making of the order, no contract could be made after that date which would be binding on the company unless made by the liquidator or, *semble*, with his approval. It seems also that the provisions of



this section would apply in the case of the appointment of a provisional liquidator though there is no decision on this point. — *Company Law*, p. 408. A sale of the company's property to a director after the appointment of a liquidator is valid, the management and control of the property by the directors having ceased at the time of liquidation. — *In re Mabou Coal & Gypsum Co.*, (1894), 27 N. S. 305; and see *Graham v. Casselman Lumber Co.*, (1893), 4 R. J. Q. (S. C.) 91.

**Resignation and removal.** 32. A liquidator may resign or may be removed by the Court on due cause shown, and every vacancy in the office of liquidator shall be filled by the Court.

R. S., c. 129, § 27; Imp. § 149 (6, 7). Where there is a want of harmony between liquidators, the Court will remove one of them on the advice of creditors. — *Cloyes v. Darling*, (1884), 16 Rev. Leg. 649; *Exchange Bank v. Campbell*, (1885), 15 Rev. Leg. 373. An application to remove a liquidator was granted on the following grounds: (1) That the majority of the creditors requested the change; (2) That the proposed liquidators would act without remuneration; (3) That the business connections of one of the proposed liquidators would be beneficial to the company. — *In re Assiniboine Valley Stock Co.*, (1889), 6 Man. R. 105. For conditions upon which the Court will discharge a liquidator in default, see *Plender v. Fitzgerald*, (1888), M. L. R. 5 Q. B. 446; see also, *In re Central Bank of Canada, Hogaboom's Case*, (1897), 24 O. A. R. 470.

#### *Powers and duties of liquidators.*

**Duties after appointment.** 33. The liquidator, upon his appointment, shall take into his custody or under his control, all the property, effects, and choses in action to which the company is or appears to be entitled, and he shall perform such duties in reference to winding up the business of the company as are imposed by the Court or by this Act.

R. S., c. 129, § 30; Imp. § 150 (1). As to the right of a liquidator to possession of securities which the company had deposited with a bailee, see *Elgin Loan and Savings Co. v. National Trust Co., Ltd.*, (1905), 10 O. L. R. 41.

**Powers of liquidator.** 34. The liquidator may, with the approval of the Court, and upon such previous notice to the creditors, contributories, shareholders, or members as the Court orders: a) Bring or defend any action, suit, or prosecution or other legal proceeding, civil or criminal, in his own name as liquidator or in the name or on behalf of the company, as the case may be; b) Carry on the business of the company so far as is necessary to the beneficial winding-up of the same; c) Sell the real and personal and heritable and moveable property, effects, and choses in action of the company, by public auction or private contract, and transfer the whole thereof to any person or company, or sell the same in parcels; d) Do all acts, and execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose use, when necessary, the seal of the company; e) Prove, rank, claim, and draw dividends in the matter of the bankruptcy, insolvency, or sequestration of any contributory, for any sum due the company from such contributory, and take and receive dividends in respect of such sum in the matter of the bankruptcy, insolvency, or sequestration, as a separate debt due from such contributory and ratably with the other separate creditors; f) Draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company; g) Raise upon the security of the assets of the company, from time to time any requisite sum or sums of money; and h) Do and execute all such other things as are necessary for winding up the affairs of the company and distributing its assets. 2. The drawing, accepting, making, or endorsing of every such bill of exchange or promissory note, as aforesaid, on behalf of the company, shall have the same effect, with respect to the liability of such company, as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf of such company in the course of the carrying on of its business. 3. No delivery of the whole or of any part of the assets of the company shall be necessary to give a lien to any person taking security as aforesaid upon the assets of the company.

R. S., c. 129, § 31; 62 & 63 Vic. c. 42, § 3; Imp. § 151. A liquidator cannot begin proceedings against debtors of the company without previous consent of the Court on notice to creditors, contributories, shareholders, or members. — *Ross v. Perras*, (1894), 5 R. J. Q. (S. C.) 470. The liquidator must be specially authorized to institute an action for the recovery of a claim due to the company, and a general authorization to recover all the assets of the company is not sufficient. — *Freygang v. Daveluy*, (1892), 2 R. J. Q. (S. C.) 505. When so authorized, and when the action has been brought in the name of the company, and the liquidator is not otherwise a party to it, he is not liable personally for costs. — *Ontario Forge & Bolt Co., v. Comet Cycle Co.*, (1896), 17 O. P. R. 156. But see *Boyd v. Dominion Cold Storage Co.*, (1897), 17 O. P. R. 486, where a liquidator, who intervened to defend an action in his own name, was held personally liable for



costs. *Cp. Sarnia, etc., Manufacturing Co. v. Hutchinson*, (1889), 17 O. R. 676. Before the winding-up order is made, the liquidator sues in the name of the company. — *Sarnia, etc., Manufacturing Co. v. Hutchinson*, (1889), 17 O. R. 676. But see *Samson v. Manicouagan Fish & Oil Co.*, (1891), 17 Q. L. R. 65. The company retains its corporate state until such order is made. The liquidator is simply an officer of the court, and acts in the place of directors and other officers, whose powers cease on his appointment. — *Ross v. Perras*, (1894), 5 R. J. Q. (S. C.) 470; *Fairbanks v. Pioneer Beet Root Sugar Co.*, (1890), 20 Rev. Leg. 99; *Salter v. St. Lawrence, etc., Co.*, (1896), 28 N. S., at p. 338. But where the liquidator endeavors to get from a contributory the amount of his contribution, or where he attempts to recover a payment made by the company to a creditor who actually knew or who had reasonable grounds to believe the company to be insolvent, he may, with the sanction of the Court, sue as liquidator. — See *Sarnia, etc., Manufacturing Co. v. Hutchinson*, (1889), 17 O. R. 676; *In re Bolt & Iron Co.*, (1884), 10 O. P. R. 434; *Kent v. Blandy* (1897), R. J. Q. 6 Q. B. 196. Liquidators are officers of the court. — *In re Central Bank, Henderson's Case*, (1889), 17 O. R. 110. *In Kent v. Blandy*, (1896), 10 Q. R. (S. C.) 255, it was held that the liquidator could bring an action to nullify a payment made by the company to a creditor who sued the insolvent estate of that company, on the ground that the liquidator represents the creditors in respect to bringing actions which belong to the creditors themselves. "The result of the decisions and *dicta* on this subject (the right of the liquidator as paramount to that of the company) is perhaps this, that although the liquidator is substituted for and enforces the rights of the creditors in the right of the company, yet that the winding-up order calls into existence new rights and new liabilities which did not exist before, and that equities which might have been set up against the company cannot prevail against the liquidator as representative of the creditors." — Buckley, *Company Law*, p. 272. But Parker and Clarke believe that, beyond the powers given under §§ 94—100, "the liquidator stands on no higher footing than the company and cannot be regarded as a creditor or subsequent purchaser under the provisions of the Chattel Mortgage Act, Conditional Sales Act, and kindred acts." — *Company Law*, p. 417. See *In re Central Bank, Nasmith's Case*, (1888), 16 O. R. 293, at p. 305; *In re Standard Fire Insurance Co., Caston's Case*, (1885), 12 O. A. R. 486 at p. 495; *In re Bolt & Iron Co.*, (1883), 10 O. P. R. 437. As to whether the liquidator of a company can object to the want of registration or to formal defects in a chattel mortgage as an execution creditor or a subsequent mortgagee could do, see *In re Rainy Lake Lumber Co.*, (1888), 15 O. A. R. 749. As to practice in an action by the liquidator against directors for alleged illegal acts, see *London & Western Trusts Co., v. Lacomb*, (1906), 13 O. L. R. 34. For procedure in actions by the liquidator, see also *City of Montreal v. Gagnon*, (1904), Q. R. 25 S. C. 178. Where a non-resident shareholder intervened in the actions of the liquidator during the winding-up, it was held that the referee had power to order security for costs to be given and proceedings stayed until such security was provided. — *In re Sarnia Oil Co.*, (1891), 14 O. P. R. 335. Upon appointment of the liquidator the powers of the directors cease, and their fiduciary relations toward the company are at an end. Hence a sale to them by the liquidator is valid. — *Chatham Bank v. McKeen*, (1895), 24 S. C. R. 348. *Cp. § 31, supra.* The power to sell the assets of a company is vested in the liquidator and not in the Court, though the liquidator must obtain the approval of the Court as a condition of exercising the power of sale. — *In re Canadian Woolen Mills, Long's Appeal*, (1905), 9 O. L. R. 367. After a winding-up, a transfer of shares may be made with the sanction of the liquidators acting under the authority of the Court. — *Redfern v. Polson*, (1894), 25 O. R. 321. *Cp. § 15, supra.* For procedure in the sale of the assets of a company being wound up, see *In re Bolt & Iron Co.*, (1885), 10 O. P. R. 437; *In re Alger & Sarnia Oil Co.*, (1891), 21 O. R. 440; affirmed in (1892), 19 O. A. R. 446. Such a sale is governed by the ordinary court practise in sales cases. — Parker and Clarke, *Company Law*, p. 419.

**When solicitor may be appointed. 35.** The liquidator may, with the approval of the Court, appoint a solicitor or law agent to assist him in the performance of his duties.

R. S., c. 129, § 32; Imp. § 151 (1) (8). It is preferable to have proceedings under a winding-up order conducted by solicitors who are totally unconnected with the company to be wound up. — *In re Joseph Hall Manufacturing Co.*, (1884), 10 O. P. R. 485. In a proceeding for the winding-up of a company a solicitor who is acting for claimants whose claim must be contested by the liquidator cannot obtain sanction of the Court to his acting also as solicitor for the liquidator. — *In re Charles Stark Co.*, (1893), 15 O. P. R. 471. The appointment of solicitors to represent the general body of creditors, with costs to be paid out of the assets, is not favoured by the courts except under special circumstances. — *In re Drury Nickle Co.*, (1895), 16 O. P. R. 525.

**Debts due to the company may be compromised. Security may be taken. 36.** The liquidator may, with the approval of the Court, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, demands, and matters in dispute in any way relating to or affecting the assets of the company or the winding-up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms, as are agreed upon. 2. The liquidator may take any security for the discharge of such calls, debts, liabilities, claims, demands, or disputed matters, and give a complete discharge in respect of all or any such calls, debts, liabilities, claims, demands, or matters.

R. S., c. 129, § 33; Imp. § 214 (1). The Court has no power to compel a compromise. Such compromise must be recommended by the liquidator and approved by the Court. — In re Sun Lithographing Co., (1893), 24 O. R. 200. This case also decided that a dissenting minority might frustrate a compromise; but see §§ 63 and 64, *infra*, which provide that if a majority in number representing three-fourths in value of the creditors agree to a compromise, and such compromise is sanctioned by the Court, it shall be binding on all creditors. — See In re Bolt & Iron Co., (1885), 10 O. P. R. 437. "The power of the courts of first instance to authorize the liquidator of a company in liquidation to compromise in the name of the company and to settle pending cases is a discretionary power, and the courts of appeal should not interfere with this discretion unless the court below has exercised it in an unreasonable manner. The liquidator is not obliged to consult the creditors of the company before demanding from the court authorization to consent to a compromise." — White, *Canadian Company Law*, p. citing Morin v. Bilodeau, (1889), 8 R. J. Q. (Q. B.) 330.

**Creditors may be compromised. 37.** The liquidator may, with the approval of the Court, make such compromise or other arrangement with creditors or persons claiming to be creditors of the company as he shall deem expedient.

R. S., c. 129, § 61; Imp. § 214 (1). See § 64, *infra*. This section is not inconsistent with § 63, *infra*. — See Ward v. Mullin, (1904), Q. R. 14 K. B. 49. A curator has no power to remit debts due to an insolvent company except upon a compromise. — In re Laurie Engine Co., (1906), 7 Q. P. R. 431.

**Court may provide as to powers of liquidator. 38.** The Court may provide, by any order subsequent to the winding-up order, that the liquidator may exercise any of the powers conferred upon him by this Act, without the sanction or intervention of the Court.

52 Vic. c. 32, § 12; Imp. § 158. An order is very rarely made under this section, the Court preferring to retain general control of proceedings. — Parker and Clarke, *Company Law*, p. 430. A judge may allow the liquidator to exercise his powers under the Winding-up Act without further authorization, when the amount is under \$ 100. — In re Victoria Montreal Insurance Co., (1902), 4 Q. P. R. 315. But see Kendall v. Webster, (1909), 14 B. C. 390; 10 West. L. R. where it was held that this sanction of the Court was necessary to enable liquidators to bring actions even though the winding-up order empowered him to "bring and defend any action." But this view was overruled in s. c. (1910), 15 B. C. 268.

#### *Appointment of inspectors.*

**Inspectors. 39.** The Court may appoint, at any time when found advisable, one or more inspectors, whose duty it shall be to assist and advise the liquidator in the liquidation of the company.

62 & 63 Vic. c. 42, § 1; Imp. § 109. Such an inspector is in a fiduciary position as regards the disposal of assets and cannot, without consent of all persons interested, become the purchaser thereof. — In re Canada Woolen Mills Ltd., Long's Appeal, (1905), 9 O. L. R. 367.

#### *Remuneration of liquidators and inspectors.*

**Remuneration, distribution of. 40.** The liquidator shall be paid such salary or remuneration, by way of percentage or otherwise, as the Court directs, upon such notice to the creditors, contributories, shareholders, or members, as the Court orders. 2. If there is more than one liquidator, the remuneration shall be distributed amongst them in such proportions as the Court directs.

R. S., c. 129, § 28; Imp. § 149 (8). The liquidator should furnish proof of services rendered. — Exchange Bank v. Campbell, (1885), 15 Rev. Leg. 373; In re Assiniboine Valley Co., (1889), 6 Man. R. 184. As to considerations in fixing the remuneration of liquidators, see the following cases: In re Central Bank of Canada, (1887), 15 O. R. 309; In re Central Bank, Lyle's Claim, (1892), 22 O. R. 247; In re Commercial Bank of Manitoba, (1893), 9 Man. R. 342; In re Saskatchewan Coal Mining Co., (1890), 6 Man. R. 593.

**Remuneration of inspectors. 41.** The Court shall determine the remuneration, if any is deemed just, of the inspector or inspectors.

62 & 63 Vic. c. 42, § 2.

#### *Depositing in bank.*

**Moneys to be deposited in bank. 42.** The liquidator shall deposit at interest in some chartered bank or post office savings bank, or other Government savings bank designated by the Court, all sums of money which he has in his hands belonging to the company, whenever and so often as such sums amount to one hundred dollars.

R. S., c. 129, § 35; Imp. § 154.

**Separate account of same, in name of liquidator as such. 43.** Such deposits shall not be made in the name of the liquidator individually, on pain of dismissal;



but a separate account shall be kept for the company of the moneys belonging to the company in the name of the liquidator as such liquidator.

R. S., c. 129, § 36; Imp. § 154.

**Balance on hand by liquidator to be deposited after winding-up.** 44. The liquidator shall, within three days after the date of the final winding-up of the business of the company, deposit at interest in the bank appointed or designated, as hereinbefore provided, any money belonging to the estate then in his hands not required for any other purpose authorized by this Act, with a sworn statement and account of such money, and that the same is all that he has in his hands.

R. S., c. 129, § 40; Imp. §§ 229—231.

**Penalty for neglect.** 45. In case any liquidator shall not, within three days after the date of the final winding-up of the business of the company, deposit in the bank, appointed or designated as hereinbefore provided, any money belonging to the estate of which he is such liquidator, then in his hands, he shall be deemed a debtor to His Majesty for such money, and may be compelled as such to account for and pay over the same.

R. S., c. 129, § 40.

#### *Court discharging functions of liquidator.*

**If no liquidator.** 46. If at any time there is no liquidator, all the property of the company shall be deemed to be in the custody of the Court.

R. S., c. 129, § 25; Imp. § 150 (2).

**Provision for discharge of liquidator and distribution by the Court; disposal of books and documents.** 47. Whenever a company is being wound up, and the realisation and distribution of its assets has proceeded so far that in the opinion of the Court it becomes expedient that the liquidator should be discharged, and that the balance remaining in his hands of the moneys and assets of the company can be better realized and distributed by the Court, the Court may make an order discharging the liquidator, and for payment, delivery and transfer into Court, or to such officer or person as the Court may direct, of such moneys and assets, and the same shall be realized and distributed, by or under the direction of the Court, among the persons entitled thereto, in the same way, as nearly as may be, as if the distribution were being made by the liquidator. 2. In such case the Court may make an order directing how the books, accounts and documents of the company and of the liquidator may be disposed of, and may order that they be deposited in Court or otherwise dealt with as may be thought fit.

55 & 56 Vic. c. 28; § 2, Imp. § 222.

#### *Contributories.*

**List of contributories.** 48. As soon as may be after the commencement of the winding-up of a company the Court shall settle a list of contributories.

R. S., c. 129, § 42; Imp. § 163 (1). For meaning of the term "contributories", see notes to § 2, *supra*. For Ontario practice in settling the list of contributories, see Parker and Clarke, *Company Law*, p. 438.

**Classes of contributories distinguished.** 49. In the list of contributories, persons who are contributories in their own right shall be distinguished from persons who are contributories as representatives of or liable for the debts of others.

R. S., c. 129, § 43; Imp. § 163 (2).

**Adding heirs to list.** 50. It shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, but such heirs or devisees may be added as and when the Court thinks fit.

R. S., c. 129, § 43; Imp. § 126.

**Liability of shareholders and their representatives; liability an asset.** 51. Every shareholder or member of the company or his representative, shall be liable to contribute the amount unpaid on his shares of the capital, or on his liability to the company, or to its members or creditors, as the case may be, under the Act, charter, or instrument of incorporation of the company, or otherwise. 2. The amount which he is liable to contribute shall be deemed an asset of the company, and a debt due to the company, payable as directed or appointed under this Act.

R. S., c. 129, § 44; Imp. §§ 125, 126. See cases in note to Dominion Companies Act, § 39. All persons who apply for letters patent and all others who subscribe to the memorandum of agreement before incorporation become liable as shareholders, and consequently as contributories, without allotment or other act of the directors. Under the old Ontario



Companies Act, it was held that where a person, before incorporation, signed an agreement to take stock, he did not become a shareholder without a subsequent allotment. — In re London Speaker Co., (1889), 16 O. A. R. 508, at p. 513, explaining the decision in In re Queen City Refining Co., (1886), 10 O. R. 264. The Ontario Companies Act has however been changed and now provides that all persons who become subscribers to the memorandum of agreement shall become shareholders. — Ontario Companies Act, § 3. The Dominion Companies Act is similar to the Ontario Act. It provides that a charter may be granted to those persons "who apply therefor, constituting such persons, and others who have become subscribers to the memorandum of agreement hereinafter mentioned, and who thereafter become shareholders in the company thereby created a body corporate", etc. — § 5. No reported decisions have been found, but under the corresponding section of the English Companies Act, (8 Edw. 7, c. 69, § 24), it has been held that subscribers to the memorandum become shareholders without allotment. — In re London & Provincial Co., (1877), 5 C. D. 325; see also Nichol's Case, (1885), 29 C. D. 447; Alexander v. Automatic Co., (1900) 2 Ch. 63. In commenting upon the Dominion Act, Parker and Clark submit: "that it is clear that those persons who subscribe to the memorandum of agreement are now liable as shareholders without further act of the directors." See In re Haggert Bros. Manufacturing Co., (1892), 19 O. A. R. 582; Modern Bedstead Co. v. Tobin, (1908), 12 O.W. R. 22. It seems that persons who sign the memorandum of agreement, after incorporation, are liable as contributories without allotment. — In re London Speaker Co., (1889), 16 O. A. R. 508, at p. 513, explaining the decision in In re Queen City Refining Co., (1886), 10 O. R. 264. However, even after incorporation, one who signs a subscription book, and who requests that the shares be allotted to him is not liable as a contributory if no allotment has been made, the condition of his subscription not having been fulfilled. — In re Zoological Society, (1889), 16 O. A. R. 543; see also In re Standard Fire Insurance Co., Kelly's Case (1884), 7 O. A. R. 448; affirmed (1885), 12 O. A. R. 486; (1886), 12 S. C. R. 644; In re Cement, etc., Co., McBean's Case, (1906), 8 O.W. R. 264. After the issue of the winding-up order, a shareholder cannot avoid his liability as a contributory by setting up defects or illegalities in the organization of the company which can only be taken advantage of upon direct proceedings by the Attorney-General. — Common v. McArthur, (1898), 29 S. C. R. 239. So after a winding-up order is made, a shareholder cannot evade liability by setting up misrepresentations or fraud in the sale of shares. Proceedings to set the contract aside must be taken before the winding-up order. — In re London Speaker Co., Pearce's Case, (1889), 16 O. A. R. 508, at p. 513; see also In re Packenham Packing Co., (1903), 6 O. L. R. 582. After a winding-up order is made, a judgment creditor cannot proceed against a shareholder for unpaid calls; the power of collecting the assets of the company is vested solely in the liquidator. — Shaver v. Cotton, (1896), 23 O. A. R. 426; In re Bolt & Iron Co., (1885), 10 O. P. R. 437; Bank of Hochelaga v. Garth, etc., (1885), 2 M. L. R. 201. The burden of proving that a person is a contributory is on the liquidator. — In re Canadian Tin Plate, etc., Co., (1906), 12 O. L. R. 594, at p. 601. As to whether a contributory may set up, as against the liquidator, all defences which he might have had against the company, see notes to § 34, *supra*. "Where the rights of creditors are involved, no shareholder can escape liability on account of irregularities in the issue of stock so long as the issue was substantially lawfully authorized by charter." — Per Hagarty, C. J., in In re Ontario Express, etc., Co., (1894), 21 O. A. R. 646, at p. 654. It is impossible to lay down any definite rule adaptable to all cases which will define accurately in each case who is and who is not a contributory within the meaning of the Winding-up Act. The cases upon this subject may be roughly divided into two classes. Under the first head are grouped cases in which the person sought to be made contributory denies that any binding contract was ever entered into between him and the company whereby he became a shareholder in the company. The second group embraces those cases in which the alleged contributory admits his present or former status as a shareholder, but maintains that, by reason of having paid the contract price for his shares, he has discharged his liability as a contributory or, having transferred his shares, he has sufficiently retired from the company so as to be no longer considered a member within the meaning of the Winding-up Act. Adopting this classification, the following cases have been reported:

I. Where the contract of membership was in issue.

(a) Defendant held liable as contributory:

Lake Superior Navigation Co., v. Morrison, (1872), 22 C. C. P. 217, (alleged failure to allot shares); Denison v. Lesslie, (1879), 3 O. A. R. 536, (notice of allotment); In re Standard Fire Insurance Co., Chisholm's Case (1884), 7 O. R. 448, 453, (subscription for purpose of qualifying as director); In re Standard Fire Insurance Co., Caston's Case, (1885), 12 O. A. R. 486, (sufficiency of offer); In re Cole and Canada, etc., Insurance Co., (1884), 8 O. R. 92, (delay in notice of allotment); In re Bishop Engraving Co., Ex parte Howard, (1887), 4 Man. R. 429, (allotment of shares); In re London Speaker Co., Pearce's Case, (1889), 16 O. A. R. 508, (fraud in sale of shares); In re Central Bank of Canada, Henderson's Case, (1889), 17 O. R. 110, (legality of contract); In re Central Bank of Canada, Home Savings, etc., Company's Case, (1891), 18 O. A. R. 489, (irregularity in transfer of shares to predecessors); In re Union Fire Insurance Co. McCord's Case, (1891), 21 O. R. 264, (purchase by manager in trust for company); In re Ontario Express Co., (1894), 21 O. A. R. 646, (irregularity in issue of stock); Publisher Syndicate, Hart's Case, (1902), 1 O. W. R. 508, (notice of allotment); In re Warton Beet Sugar Co., Jarvis' Case, (1904), 5 O.W. R. 542, (collateral agreement); Hill's Case, (1905), 10 O. L. R. 501, (allotment of stock); In re Wakefield Mica Co., (1906), 7 O.W. R. 104, (liability of agent subscribing in his own name);

In re Globe Fire Assurance Co., (1909), 11 West. L. R. 293 (sufficiency of application; collateral conditions); In re Distributors Co., Thurston's Case, (1909), 13 O.W. R. 735, (subscription for shares by a partnership; liability of special partner); Chambers v. Globe Fire Assurance Co., (1909), 11 West. L. R. 45, (withdrawal of application after allotment); Foley v. Barber, (1909), 14 O.W. R. 669, (alleged misrepresentation in sale of shares); In re Clinton Thrasher Co., (1910), 15 O.W. R. 645, (gratuitous distribution among existing shareholders); In re Niagara Falls H. & S. Co., (1910), 15 O.W. R. 326, (defendant estopped from denying liability on shares allotted in excess of subscription).

(b) Defendant held not liable as contributory:

In re Standard Fire Insurance Co., Turner's Case, (1884), 7 O. R. 448, (application subject to condition not fulfilled); In re Standard Fire Insurance Co., Barber's Case, (1885), 12 O. A. R. 486, (illegality of issues of shares); Stevens v. London Steel Works, Delano's Case, (1887), 15 O. R. 75, (increase in capital stock); The Magog, etc., Co., v. Price, (1887), 14 S. C. R. 664, (failure to allot shares); In re Zoological Society, (1889), 16 O. A. R. 543, (contract conditioned on allotment of shares); Nelles v. Ontario Investment Association, (1889), 17 O. R. 129, (application induced by fraud); In re Central Bank v. Hogg, (1890), 19 O. R. 7, (contract on behalf of an infant); In re Ontario Express, etc., Co., (1894), 21 O. A. R. 646, (illegality in issue of stock); In re Publishers' Syndicate, Mallory's Case, (1902), 3 O. L. R. 552, (application subject to condition not fulfilled; no notice of allotment); In re Provincial Grocers, Ltd., Calderwood's Case, (1905), 10 O. L. R. 705, (withdrawal of application before acceptance by company); In re Canadian Tin Plate, etc., Co., (1906), 12 O. L. R. 594, (insufficiency of acceptance; notice of allotment); In re Packenham Packing Co., (1906), 12 O. L. R. 100, (irregularity in issue of stock); In re Perrin Plow Co., Allan's Case, (1908), 11 O.W. R. 186, (shares held as collateral security); In re Davies, McNichols Case, (1909), 18 O. L. R. 240, (shares taken as security for accommodation endorsement); In re Canadian McVicer Engine Co., Gei's Case, (1909), 13 O.W. R. 916, (conditional subscription); In re Lake Ontario Navigation Co., (1910), 15 O.W. R. 23, reversing In re Lake Ontario Navigation Co., (1909), 13 O. W. R. 1032, (application for shares on condition that no further calls would be made thereon); In re Nutter Brewery, (1910), 15 O.W. R. 265, (no allotment).

II. Where the discharge of liability as contributory was in issue.

a) Defendant held liable:

In re Collingwood Dry Dock, etc., Co., (1890), 20 O. R. 107, (shares issued for services in formation of company); Ontario Investment Association v. Leys, (1893), 23 O. R. 496, (failure of nominal holder to remove name from list); Union Bank v. Morris, (1900), 27 O. A. R. 396, (shares issued at discount); In re Publishers' Syndicate, Paton's Case (1902), 5 O. L. R. 392, (liability of transferor of shares); In re Warton Beet Sugar Co., McNeil's Case, (1905), 10 O. L. R. 219, (receipt of bonus shares); In re Cornwell Furniture Co., (1909), 14 O.W. R. 352, (liability on bonus stock distributed pro rata among subscribers). — In re Jones and Moor Electric Co., (1909), 10 West. L. R. 210, (agreement with company for issue of paid up shares; accord and satisfaction); In re D. Wade Co., Ltd., (1909), 2 Alb. 117; 10 West. L. R. 527, (unpaid calls, *semble*).

b) Defendant held not liable:

McCracken v. McIntyre, (1877), 1 S. C. R. 479, (shares purchased without notice that they were issued at discount); In re Owen Sound Dry Dock, etc., Co., (1891), 21 O. R. 349, (shares issued at a discount); In re Hess Manufacturing Co., Edgar v. Sloan, (1894), 23 S. C. R. 644, (payment for shares in property); In re Cooperative, etc., Co., (1902), 1 O.W. R. 778, (adequacy of consideration); In re North Bay Supply Co., (1905), 6 O.W. R. 85, (payment for shares in good will); In re Sprouted Food Co., Hudson's Case, (1905), 6 O.W. R. 514, (discharge of liability upon transfer of shares); Hood v. Eden, (1905), 36 S. C. R. 476, (payment for shares in property); In re Warton Beet Sugar Co., Freeman's Case, (1906), 12 O. L. R. 149, (transfer of bonus shares before winding-up); In re Ottawa Cement Co., (1907), 14 O. L. R. 389, (payment for shares by disbursements on behalf of company); In re D. Wade Co., Ltd., (1909), 2 Alb. 117; 10 West. L. R. 527, (irregular forfeiture of shares). For liability of promoter before incorporation, see Sandusky Coal Co. v. Walker, (1896), 27 O. R. 677. For additional cases on the liability of contributories, see note § 2, *supra*.

**Liability after transfer of shares. 52.** If a shareholder has transferred his shares under circumstances which do not, by law, free him from liability in respect thereof, or if he is by law liable to the company or its members or creditors, as the case may be, to an amount beyond the amount unpaid on his shares, he shall be deemed a member of the company for the purposes of this Act, and shall be liable to contribute, as aforesaid, to the extent of his liabilities to the company or its members or creditors, independently of this Act. 2. The amount which he is so liable to contribute shall be deemed an asset and a debt as aforesaid.

R. S., c. 129, § 45. See cases cited under § 2, *supra*. There is nothing in the Winding-up Act which creates any liability on the part of a past member where such member is not subjected to liability by the Act under which the company was created, or some Act relating to it. — In re Warton Beet Sugar Co., Freeman's Case, (1906), 12 O. L. R. 149, at p. 152. Where a transfer was made to enable the transferee to vote at a meeting and no re-transfer was made, the transferee was held liable as a contributory. — Ontario Investment Association v. Leys, (1893), 23 O. R. 496; see also In re Union Fire Insurance Co., McCord's Case, (1891), 21 O. R. 264. A purchaser for



value without notice that shares have been issued at discount is not liable to an execution creditor of the company for the amount unpaid on shares. — *McCracken v. McIntyre*, (1877), 1 S. C. R. 479; and see *Page v. Austin*, (1884), 10 S. C. R. 132, at p. 149.

**Liability of contributory a debt.** 53. The liability of any person to contribute to the assets of a company under this Act, in the event of the business of the same being wound up, shall create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made, as hereinafter mentioned, for enforcing such liability.

R. S., c. 129, § 46; Imp. § 125.

**Provable against his estate.** 54. In the case of the bankruptcy or insolvency of any contributory, the estimated value of his liability to future calls, as well as calls already made, may be proved against his estate.

R. S., c. 129, § 46; Imp. § 125.

**Contributory may be ordered to hand over money and books.** 55. The Court may, at any time, after making a winding-up order, require any contributory for the time being settled on the list of contributories as trustee, receiver, banker, agent, or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the liquidator, any sum or balance, books, papers, estate, or effects which are in his hands for the time being, and to which the company is *prima facie* entitled.

R. S., c. 129, § 47; Imp. § 164.

**Court may order payment by contributory.** 56. The Court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents, to the company, exclusive of any moneys which he or the estate of the person whom he represents is liable to contribute by virtue of any call made in pursuance of this Act.

R. S., c. 129, § 48; Imp. § 165.

**When calls may be made on contributories.** 57. The Court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves.

R. S., c. 129, § 49; Imp. § 166 (1).

**Consideration of possible failure to pay. Proviso as to maturity of debt.** 58. The Court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same: Provided that no call shall compel payment of a debt before the maturity thereof, and that the extent of the liability of any contributory shall not be increased by anything in this section contained.

R. S., c. 129, § 49; Imp. § 166 (2). "It is submitted that the latter part of this section does not apply so to prevent the liquidator obtaining immediate payment of unpaid balances due on stock even when the shares had been bought on the basis of instalment payments. The winding-up order overrides the contract between the company and the shareholders, and substitutes a statutory for a contractual liability." — *Parker and Clarke, Company Law*, p. 473, citing *In re Warton Beet Sugar Co., Jarvis' Case*, (1905), 5 O.W. R. 542.

**Payment by contributory into bank. Enforcement of order.** 59. The Court may order any contributory, purchaser or other person from whom money is due to the company, to pay the same into some chartered bank or post office savings bank, or other bank or Government savings bank, to the account of the Court, instead of the liquidator. 2. Such order may be enforced in the same manner as if it had directed payment to the liquidator.

R. S., c. 129, § 50; Imp. § 167.

**Rights of contributories.** 60. The Court shall adjust the rights of the contributories among themselves.

R. S., c. 129, § 51; Imp. § 170.

#### *Meetings of creditors.*

**Meetings of creditors for ascertaining their wishes.** 61. The Court may, if it thinks expedient, direct meetings of the creditors, contributories, shareholders, or



members to be summoned, held and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

R. S., c. 129, § 19; Imp. §§ 152, 219. Creditors who do not attend meetings after notice are presumed to be willing to be bound by the action of those who do attend. — *Exchange Bank v. Campbell*, (1885), 15 Rev. Leg. 373. Creditors are entitled to notice of the time and place of meetings and the business proposed to be transacted at such meetings. Only such questions as are announced in the notice may be discussed at the meetings. — *In re Sun Lithographing Co.*, (1892), 5 O.W. R. 509.

**Votes according to amount of claim. Preliminary proof. 62.** In such case regard shall, as to creditors, be had to the amount of the debt due to each creditor and as to shareholders or members, to the number of votes conferred on each shareholder or member by law or by the regulations of the company. 2. The Court may prescribe the mode of preliminary proof of creditors claims for the purpose of the meeting.

R. S., c. 129, § 19. See notes § 21, *supra*. As to the action of the Court when there is a contest for the appointment of liquidators see: *Cloyes v. Darling*, (1884), 16 Rev. Leg. 649; *In re Central Bank*, (1887), 15 O. R. 309; *In re Alpha Oil Co.*, (1887), 12 O. P. R. 298; *In re Bank of Liverpool*, (1889), 22 N. S. 97; *In re Commercial Bank*, (1893), 9 Man. R. 342.

**Court may summon creditors to consider any proposed compromise. 63.** Where any compromise or arrangement is proposed between a company in course of being wound up under this Act and the creditors of the company, or by and between any such creditors or any class or classes of such creditors and the company, the Court, in addition to any other of its powers, may, on the application, in a summary way, of any creditor, or of the liquidator, order that a meeting of such creditors or class or classes of creditors shall be summoned in such manner as the Court shall direct.

62 & 63 Vic. c. 43, § 3; Imp. §§ 152, 219. See notes §§ 36 and 37, *supra*. This section is not inconsistent with the provisions of § 37, *supra*. — See *Ward v. Mullin*, (1904), Q. R. 14 K. B. 49. As to form of notice of meeting and time for issuing same, see *In re Sun Lithographing Co.*, (1892), 5 O. W. R. 509.

**Sanction of compromise. 64.** If a majority in number, representing three-fourths in value, of such creditors, or class or classes of creditors, present either in person or by proxy at such meeting, agree to any arrangement or compromise, such arrangement or compromise may be sanctioned by an order of the Court, and in such case shall be binding on all such creditors, or on such class or classes of creditors, as the case may be, and also on the liquidator and contributories of the company.

62 & 63 Vic. c. 43, § 3. See § 37, and note to § 36, *supra*.

**Chairman of meeting. 65.** In directing meetings of creditors, contributories, shareholders, or members of the company to be held as provided in this Act, the Court may either appoint a person to act as chairman of such meeting, or direct that a chairman be appointed by the persons entitled to be present at such meeting; and, in case the appointed chairman fails to attend the said meeting, the persons present at the meeting may elect a chairman qualified who shall perform the duties prescribed by this Act.

52 Vic. c. 32, § 13.

**Voting to be in person or by proxy. 66.** No contributory, creditor, shareholder, or member shall vote at any meeting unless present personally or represented by some person acting under a written authority, filed with the chairman or liquidator, to act as such representative at the meeting, or generally.

R. S., c. 129, § 55.

#### *Production of pass-books.*

**Bank book of liquidator to be produced at meeting. 67.** At every meeting of the contributories, creditors, shareholders, or members, the liquidator shall produce a bank pass-book, showing the amount of the deposits made for the company, the dates at which such deposits were made, the amount withdrawn and dates of such withdrawal.

R. S., c. 129, § 37. See § 148, *infra*.

**And on order of Court. 68.** The liquidator shall also produce such pass-book whenever ordered so to do by the Court.

R. S., c. 129, § 38. For penalty for failure to comply with such an order, see § 140, *infra*.

#### *Creditors' claims.*

**What debts may be proved against company; uncertain claims valued. 69.** When the business of a company is being wound up under this Act, all debts payable

on a contingency, and all claims against the company, present or future, certain or contingent, and for liquidated or unliquidated damages, shall be admissible to proof against the company. 2. In case of any claim subject to any contingency or for unliquidated damages or which for any other reason does not bear a certain value, the Court shall determine the value of the same and the amount for which it shall rank.

R. S., c. 129, § 56; Imp. § 206. This section applies only to unsecured or partly secured creditors. A secured creditor may rely on his security, and need not file his claim. — In re Brampton Gas Co., (1902), 4 O. L. R. 509. In re Kennedy, (1875), 36 U. C. Q. B. 471, it was held that a landlord in case of his tenant's insolvency has no preference for rent over other claims; his only protection being his right to a preferential lien on property on the demised premises; see also *Monroe v. Commercial Building Society*, (1877), 36 U. C. Q. B. 464. But where, by statute, a lessor has a right upon the insolvency of his lessee, to receive the whole amount of the rent to the end of the term, he may rank for such full amount. — In re Hart and Ontario Express, etc., Co., (1892), 22 O. R. 510. Where a depositor left a cheque with the president of the bank with instructions to draw out the money and invest it in a mortgage as soon as suitable security could be found, and the president, the day before suspension, endorsed the cheque, drew out the money, and put it in an envelope addressed to the depositor, it was held that the depositor must rank as an ordinary creditor. — In re Commercial Bank of Manitoba, *Robertson's Claim*, (1894), 10 Man. R. 61. Where parties in the position of trustees for the company purchase claims against the company at a discount, they rank for the face value of their claim, but are entitled to receive dividends only to the extent of their actual payments made to acquire the claim. — In re Catholic Register, Ex. parte Foy & Coffee, Master in Ordinary (Ont.), 10 Feb. 1900, (unreported), cited by Masten, *Company Law*, p. 652. Shareholders contributing money to increase the reserve fund cannot rank as creditors upon the assets of the company. — In re Atlas Loan Co., *Claims on Reserve Fund*, (1905), 9 O. L. R. 468. In the absence of a surplus, creditors are only entitled to dividends on the amount due for the principal debt and interest thereon computed up to the date of the winding-up order. — In re Union Fire Insurance Co., (1898), 8 O.W. R. 9. After the winding-up order, a judgment creditor cannot bring an action against the contributory for payment of the amount unpaid on shares. He must come in with the other creditors and receive his share of the dividends. — *Shaver v. Cotton*, (1896), 23 O. A. R. 426, at p. 428. The Crown claiming as a simple contract creditor has a priority over other creditors of equal degree. — *The Queen v. Bank of Nova Scotia*, (1885), 11 S. C. R. 1; In re Elmsdale Co., (1904), 24 C. L. T. (Occ. N.) 341. As to a municipality's right to prove a claim for taxes against a company in liquidation, see In re Ottawa Porcelain & Carbon Co., (1900), 31 O. R. 976. For a statement of the Master's jurisdiction in trial of claims, see *Clarke v. Union Fire Insurance Co.*, *Caston's Case*, (1884), 10 O. P. R. 339.

**Claims of clerks and employees privileged.** 70. Clerks or other persons in, or having been in the employment of the company, in or about its business or trade, shall be collocated in the dividend sheet by special privilege over other creditors, for any arrears of salary or wages due and unpaid to them at the time of the making of the winding-up order, not exceeding the arrears which have accrued to them during the three months next previous to the date of such order.

R. S., c. 129, § 56; Imp. § 209. A person engaged in auditing books of the company is not embraced within the class of persons designated in this section. — In re Ontario Forge & Bolt Co., *Townsend's Case*, (1896), 27 O. R. 230. Persons occupying positions of president or vice-president, if they are entitled to salaries by resolution of the shareholders, will rank as preferred creditors. — *Fane v. Langly*, (1899), 20 C. L. T. 9; See also In re Ontario Express, etc., Co., (1894), 25 O. R. 587. A person employed as a mechanical expert, and also as a sales agent is not a "clerk or other person" in the employ of the company. — In re American Tire Co., *Dingman's Case*, (1903), 2 O.W. R. 29. The managing director cannot be classed as a "clerk or other person" in the employ of the company. — In re Ritchie-Hearn & Co., (1905), 6 O.W. R. 474.

**Law of set-off to apply.** 71. The law of set-off, as administered by the courts, whether of law or equity, shall apply to all claims upon the estate of the company, and to all proceedings for the recovery of debts due or accruing due to the company at the commencement of the winding-up, in the same manner and to the same extent as if the business of the company was not being wound up under this Act.

R. S., c. 129, § 57; Imp. § 165. A company in liquidation cannot, as against a claim based upon a lease, set off damages which it alleges it has suffered at the hands of the claimant. — In re Montreal Cold Storage, etc., Co., *Mullin's Claim*, (1902), 4 Q. P. R. 341. A contributory of an insolvent company, who is also a creditor, cannot set off the debt due to him by the company against calls made in the course of winding-up proceedings in respect of the double liability imposed by the Banking Act, R. S. C. c. 29. — *Maritime Bank v. Troop*, (1888), 16 S. C. R. 456; and see *Warton Beet Sugar Co.*, *McNeil's Case*, (1905), 10 O. L. R. 219. However "if before the winding-up order has been made, the amount due on stock has actually been set off by the company against the debt due by it to the contributory, and entries been made in the company's books, the transaction will stand. — In re Victor Varnish Co., *McWater's Case*, (an unreported decision



of the Master-in-Ordinary, Ontario), December 1907." — Parker and Clarke, *Company Law*, p. 492. A director of the company, liable to contribute to the assets of the company under § 123 of this Act, cannot set off a debt due him by the company. — In re Wiarton Beet Sugar Co., Freeman's Case, (1906), 12 O. L. R. 149, at p. 153. In In re Mimico, etc., Manufacturing Co., Pearson's Case, (1895), 26 O. R. 289, it was held that a director of a company who also acted as solicitor was entitled to set off the costs of suits conducted by him against his liability as a contributory.

**Time for sending in claims. 72.** The Court may fix a certain day or certain days on or within which creditors of the company may send in their claims, and may direct notice thereof to be given by the liquidator, and determine the manner in which notice of the day or days so fixed shall be given by the liquidator to the creditors.

R. S., c. 129, § 59; Imp. § 169. See § 74 (2), *infra*. As to the right of a referee to allow a claim filed after the time limited by the advertisement, see In re Central Bank, Cayle's Case, (1889), 17 O. R. 122.

**Creditors required to prove claims. Disallowance on default. Disallowance on hearing. 73.** The liquidator may give notice in writing to creditors who have sent in their claims to him, or of whose claims he has notice, and whose claims he considers should not be allowed without proof, requiring such creditors to attend before the Court on a day to be named in such notice and prove their claims to the satisfaction of the Court. 2. In case any creditor does not attend in pursuance of such notice his claim shall be disallowed, unless the Court sees fit to grant further time for the proof thereof. 3. If any creditor attends in pursuance of such notice, the Court may on hearing the matter allow or disallow the claim of such creditor in whole or in part.

52 Vic. c. 32, § 14; 55 & 56 Vic. c. 28, § 1; Imp. §§ 169, 206. Landlords must prove, with other creditors, claims for rent due before the winding-up order. — Fuches v. Hamilton Tribune Co., (1884), 10 O. P. R. 409. As to claims for money lent to the company, see In re Farmers' Loan and Savings Co., Ex parte Holmes, (1901), 21 C. L. T. (Occ. N.) 383. As to proof of claims of holders of unmatured policies in insurance companies, see In re Merchants Life Association, Vernon Cases, (1901), 1 O. L. R. 256; and see also Montreal Cold Storage Co., Mullin's Claim, (1902), 4 Q. P. R. 341. A claimant coming in after the time allowed for filing claims must shew, upon affidavit, some *prima facie* case of merit, and explain the reason for his delay. — In re Merchants Life Association, Hoover's Claim, (1901), 22 C. L. T. (Occ. N.) 21.

**Distribution of assets. As to claims not sent in. 74.** After the notices required by the two last preceding sections have been given, and the respective times therein specified have expired, and all claims of which proof has been required by due notice in writing by the liquidator in that behalf have been allowed or disallowed by the Court in whole or in part, the liquidator may distribute the assets of the company or any part thereof among the persons entitled thereto and without reference to any claim against the company which shall not have then been sent to the liquidator. 2. The liquidator shall not be liable to any persons whose claim shall not have been sent in at the time of distributing such assets or part thereof for the assets or part thereof so distributed.

R. S., c. 129, § 60. Even though the creditor has not filed his claim, the liquidator, if he has knowledge of such claim, and does not dispute it, must pay over to such creditor the proper dividend. — Carling v. Black, (1884), 6 O. R. 441.

**Rank of claims sent in after the distribution has been commenced. 75.** In case any claim or claims shall be sent in to the liquidator after any partial distribution of the assets of the company, such claim or claims, subject to proof and allowance as required by this Act, shall rank with other claims of creditors in any future distribution of assets of the company.

R. S., c. 129, § 60.

#### *Secured claims.*

**Duty of creditor holding security. 76.** If a creditor holds security upon the estate of the company, he shall specify the nature and amount of such security in his claim, and shall therein, on his oath, put a specified value thereon.

R. S., c. 129, § 62. A mechanic's lien is a preferential claim under the Winding-up Act. — In re Empire Brewing Co., Rouke & Cass' Claim, (1891), 8 Man. R. 424; see also In re Ibez Mining, etc., Co., (1902), 9 B. C. 557. As to jurisdiction of court on a petition by a mortgagee in a winding-up proceeding, asking for a conveyance to him by the liquidator of the company's equity of redemption, see In re Essex Land & Timber Co., Trout's Case, (1891), 21 O. R. 367; In re Thunderhill Mining Co., (1894), 3 B. C. 351. In Ontario Bank v. Chaplin, (1891), 20 S. C. R. 152, it was held "that a creditor is not entitled to rank for the full amount of his claim upon the separate estates of insolvent debtors, jointly and severally liable for the full amount of the debt,



but is obliged to deduct from his claim, the amount previously received from the estates of the other parties jointly and severally liable therefor." As to the rights of a mortgagee or debenture holder to realize on his security, see *In re Brampton Gas Co.*, (1902), 4 O. L. R. 509; A secured creditor can make a demand and petition for the winding-up of the company under § 4, *supra*, without valuing in the petition his security; *In re Cushing Sulphite Fibre Co.*, (1905), 37 N. B. 254. In *In re British Columbia Pottery Co.*, (1895), 4 B. C. 525, it was held that under §§ 76 and 77 of the Winding-up Act, it is compulsory on the creditor to value his security, leaving it to the liquidator to take it or allow creditor to keep it at that valuation. In *In re Brampton Gas Co.*, (1902), 4 O. L. R. 509, the Court held that creditors holding fully secured claims and content to rely on their security without seeking to share in the distribution of other assets, cannot be compelled to file their claims in winding-up proceedings. "It is plain, I think, that the debts for the proof of which provision is made by section 56 (section 73 present Act,) and the following sections which deal with the subject of proof of debts are unsecured or only partly secured debts in respect of which the creditor seeks to rank upon the general estate of the company in liquidation, and have no application to fully secured claims where the creditor is content to rely on his security, and that only, and does not seek to share in common with other creditors in the distribution of the general assets of the company. The provisions as to valuing securities (§§ 76—80 present Act) are in entire harmony with this view." — Per Meredith C. J., in *In re Brampton Gas Co.*, (1902), 4 O. L. R. 509, at p. 517. See *In re Lenora, etc., Mining Co.*, (1902), 9 B. C. 471. Although this section requires that the creditor shall specify the nature and amount of his security in his claim, yet, where a creditor files a claim without professional advice and inadvertently omits to mention any security, he will be allowed to withdraw his claim and file an amended one. — *In re Lake Winnipeg Transportation Co., Bergman's Claim*, (1892), 8 Man. R. 463. It has been held, in British Columbia, that a motion by a liquidator for an order, that a creditor deliver over to him certain securities can not be allowed, and that such an application should be made by summons. — *In re Nelson Saw Mill Co.*, (1898), 6 B. C. 156.

**Option of liquidator as to security. 77.** The liquidator, under the authority of the Court, may either consent to the retention by the creditor of the property and effects constituting such security or on which it attaches, at such specified value, or he may require from such creditor an assignment and delivery of such security, property, and effects, at such specified value, to be paid by him out of the estate so soon as he has realized such security, together with interest on such value from the date of filing the claim till payment.

R. S., c. 129, § 62. See notes § 76, *supra*.

**Ranking of secured creditor. 78.** In case of such retention, the difference between the value at which the security is retained and the amount of the claim of such creditor shall be the amount for which he may rank as aforesaid.

R. S., c. 129, § 62. See notes § 76, *supra*.

**Security by negotiable instrument. Revaluation. 79.** If creditor holds a claim based upon negotiable instruments upon which the company is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of the three last preceding sections, and shall put a value on the liability of the person primarily liable thereon as being his security for the payment thereof. 2. After the maturity of such liability and its non-payment, he shall be entitled to amend and revalue his claim.

R. S., c. 129, § 62. See notes § 76, *supra*.

**Security by mortgage or real property or a ship. Assignment with defective title; under obligation; subject to indemnity. 80.** If the security consists of a mortgage upon ships or shipping, or upon real property, or of a registered judgment, or an execution binding real property which is not by some other provision of this Act invalid for any purpose of creating a lien, claim, or privilege upon the real or personal property of the company, the property mortgaged or bound by such security shall only be assigned and delivered to the creditor: a) Subject to all previous mortgages, judgments, executions, hypothecs, and liens thereon, holding rank and priority before his claim; and b) Upon his assuming and binding himself to pay all such previous mortgages, judgments, executions, hypothecs, and liens; and c) Upon his securing the estate of the company to the satisfaction of the liquidator against any claim by reason of such previous mortgages, judgments, executions hypothecs, and liens.

R. S., c. 129, § 63. Cp. § 133, *infra*, which applies only to cases where the liquidator is the sole party interested in the mortgage property. See *In re Canada Cabinet Co.*, (1907), 9 O.W. R. 818.

**In case of subsequent claims by: consent; claims filed; value paid; company indemnified. 81.** If there are mortgages, judgments, executions, hypothecs, or liens upon such ships or shipping or real property subsequent to those of such creditor,

he shall only obtain the property: a) By consent of the subsequently secured creditors; or b) Upon their filing their claims specifying their security thereon as of no value; or c) Upon his paying them the value by them placed thereon; or, d) Upon his securing the estate of the company to the satisfaction of the liquidator against any claim by reason of such subsequent mortgages, judgments, executions, hypothecs, and liens.

R. S., c. 129, § 63.

**Authority to retain necessary.** 82. Upon a secured claim being filed, with a valuation of the security, the liquidator shall procure the authority of the Court to consent to the retention of the security by the creditor, or shall require from him an assignment and delivery thereof.

R. S., c. 129, § 64.

#### *Dividend sheet.*

**Must provide for privileged and secured claims.** 83. In the preparation of the dividend sheet, due regard shall be had to the rank and privilege of every creditor, but no dividend shall be allotted or paid to any creditor holding security upon the estate of the company for his claim until the amount for which he may rank as a creditor upon the estate, as to dividends therefrom, is established as herein provided.

R. S., c. 129, § 65. See notes §§ 70 and 76, *supra*.

**No lien by execution, etc., after commencement of winding up. Lien for costs excepted.** 84. [As amended by 7 & 8 Edw. 7, c. 75, § 1.] No lien or privilege shall be created: a) Upon the real or personal property of the company, for the amount of any judgment debt, or of the interest thereon, by the issue or delivery to the sheriff of any writ of execution, or by levying upon or seizing under such writ the effects or estate of the company; b) Upon the real or personal property of the company, or upon any debts due or accruing or becoming due to the company, by the filing or registering of any memorial or minute of judgment, or by the issue or taking out of any attachment or garnishee order or other process or proceeding; if, before the payment over to the plaintiff of the moneys actually levied, paid, or received under such writ, memorial, minute, attachment, garnishee order, or other process or proceeding, the winding-up of the business of the company has commenced: Provided that this section shall not affect any lien or privilege for costs which the plaintiff possesses under the law of the Province in which such writ, attachment, garnishee order, or other process or proceeding was issued or taken out.

R. S., c. 129, § 66. See §§ 22 and 23, *supra*, and notes. As to lien for costs, see: *In re Saw Bill Lake Gold Mining Co.*, (1903), 2 O.W. R. 1143; *In re Oshawa Heat, Light & Power Co.*, (1906), 8 O.W. R. 415.

#### *Contestation of claims.*

**Claims or dividend may be objected to.** 85. Any liquidator, creditor or contributory, or shareholder or member may object to any claim filed with the liquidator, or to any dividend declared.

R. S., c. 129, § 67; 52 Vic. c. 32, § 15. In *Ward v. Montreal Cold Storage Co.*, (1904), Q. R. 26 S. C. 310, it was held that a shareholder of a company after liquidation must be considered as a creditor on a contestation of a claim made against the company and, as such, he is entitled to demand by direct action what he might have demanded in a contestation of a claim against the company.

**Objections to be filed in writing. Answers and replies.** 86. If a claim or dividend is objected to, the objections shall be filed in writing with the liquidator, together with the evidence of the previous service of a copy thereof on the claimant. 2. The claimant shall have six days to answer the objections, or such further time as the Court allows, and the contestant shall have three days to reply, or such further time as the Court allows.

R. S., c. 129, § 67.

**Day to be fixed for hearing.** 87. Upon the completion of the issues upon the objections, the liquidator shall transmit to the Court all necessary papers relating to the contestation, and the Court shall then, on the application of either party, fix a day for taking evidence upon the contestation, and hearing and determining the same.

R. S., c. 129, § 67.

**Costs.** 88. The Court may make such order as seems proper in respect to the payment of the costs of the contestation by either party or out of the estate of the company.

R. S., c. 129, § 67.



**Default in answer by claimant. 89.** If, after a claim or dividend has been duly objected to, the claimant does not answer the objections, the Court may, on the application of the contestant, make an order barring the claim or correcting the dividend, or may make such other order in reference thereto as appears right.

R. S., c. 129, § 67.

**Security for costs. 90.** The Court may order the person objecting to a claim or dividend to give security for the costs of the contestation within a limited time, and may, in default, dismiss the contestation or stay proceedings thereon, upon such terms as the Court thinks just.

R. S., c. 129, § 67. The security required by this section applies only to contestation of claims filed or admitted by the dividend sheet and not to a contestation of the whole dividend sheet. — *In re Union Brewery and Hyde*, (1904), 6 Q. P. R. 395.

#### *Distribution of assets.*

**Distribution of property of company. 91.** The property of the company shall be applied in satisfaction of its debts and liabilities, and the charges, costs, and expenses incurred in winding-up its affairs.

R. S. c. 129, § 58; Imp. § 186.

**Winding-up expenses payable out of estate. 92.** All costs, charges, and expenses properly incurred in the winding-up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company, in priority to all other claims.

R. S., c. 129, § 91; Imp. § 186. The Crown is entitled to a priority over all other creditors in a winding-up. — *Maritime Bank v. Regina*, (1888), 17 S. C. R. 657; *Clarkson v. Attorney-General of Ontario*, (1888), 15 O. R. 632; affirmed in (1889), 16 O. A. R. 202. In *In re Ideal House Furnisher's, City of Winnipeg's Claim*, (1909), 10 West. L. R. 717, it was held that the claim of the municipality for a business tax must rank with that of other creditors. In *In re Sun Lithographing Co.*, (1892), 6 O.W. R. 358, it was held that the liquidator, upon application by certain creditors, had no power to set apart moneys to meet preferred claims in priority to costs of liquidation.

**Distribution of surplus of property of company. 93.** The Court shall distribute among the persons entitled thereto any surplus that remains after satisfaction of the debts and liabilities of the company, and the winding-up charges, costs, and expenses, and unless otherwise provided by law or by the Act, charter, or instrument of incorporation, any property or assets remaining after such satisfaction shall be distributed among the members or shareholders according to their rights and interests in the company.

R. S., c. 129, §§ 51, 58; Imp. § 186. See notes § 92, *supra*. For a case involving the question of the distribution of surplus assets in the winding-up, see *Morrow v. Peterborough Water Co.*, (1902), 4 O. L. R. 324.

#### *Fraudulent preferences.*

**Gratuitous contracts presumed to be with intent to defraud creditors. 94.** All gratuitous contracts, or conveyances or contracts without consideration, or with a merely nominal consideration, respecting either real or personal property, made by a company in respect to which a winding-up order under this Act is afterwards made, with or to any person whatsoever, whether a creditor of the company or not, within three months next preceding the commencement of the winding-up, or at any time afterwards, shall be presumed to have been made with intent to defraud the creditors of such company.

R. S., c. 129, § 68; Imp. § 210. See topic of Fraudulent Preferences in Assignments Acts, *infra*.

**Contracts injuring or obstructing creditors presumed to be with like intent. 95.** All contracts by which creditors are injured, obstructed, or delayed, made by a company unable to meet its engagements, and in respect to which a winding-up order under this Act is afterwards made, with a person whether a creditor of the company or not, who knows such inability, or has probable cause for believing such inability to exist, or after such inability is public and notorious, shall be presumed to be made with intent to defraud the creditors of such company.

R. S., c. 129, § 68; Imp. § 210. See topic of Fraudulent Preferences in Assignments Acts, *infra*. *Quaere*, whether this section includes mortgages or conveyances. — *In re Kirby & Rathbun Co.*, (1900), 32 O. R. 9.

**Contracts with consideration voidable when. 96.** A contract or conveyance for consideration, respecting either real or personal property, by which creditors are injured or obstructed, made by a company unable to meet its engagements



with a person ignorant of such inability, whether a creditor of the company or not, and before such inability has become public and notorious, but within thirty days next before the commencement of the winding-up of the business of such company under this Act, or at any time afterwards, is voidable, and may be set aside by any court of competent jurisdiction, upon such terms as to the protection of such person from actual loss or liability by reason of such contract as the court orders.

R. S., c. 129, § 69. For a case where a mortgage of land, made by an insolvent company within thirty days of the commencement of the winding-up, was set aside, see *In re Kirby & Rathbun Co.*, (1900), 32 O. R. 9. Where the transferee knows that the debtor is unable to meet his obligations the provision of this section as to "protection of such person from actual loss or liability," does not apply. — *Kalus v. Hergert*, (1876), 1 O. A. R. 75, (decided under Insolvency Act of 1875); see also *Mathers v. Lynch*, (1868), 27 U. C. Q. B. 244, (decided under Insolvency Act of 1864); *Skinner v. McLeod*, (1874), 15 N. B. 134, (decided under Insolvency Act of 1869).

**Contracts made with intent to defraud or delay creditors void.** 97. All contracts or conveyances made and acts done by a company respecting either real or personal property, with intent fraudulently to impede, obstruct or delay the creditors of the company in their remedies against the company, or with intent to defraud the creditors of the company or any of them, and so made, done, and intended with the knowledge of the person contracting or acting with the company, whether a creditor of the company or not, and which have the effect of impeding, obstructing, or delaying the creditors in their remedies, or of injuring them, or any of them, shall be null and void.

R. S., c. 129, § 70. The usual interpretation placed upon the word "void" in Acts of this kind is "voidable." — *The Meriden Britannia Co. v. Braeden*, (1894), 24 O. A. R. 352. For a case where a mortgage, made by an insolvent company without intent to defraud, and without knowledge of insolvency on the part of the company or mortgagees, was held valid, see *Royal Canadian Bank v. Kerr*, (1870), 17 Gr. 47; see also the following cases adopting the same principle: *Allan v. Clarkson*, (1870), 17 Gr. 570; *Risk v. Sleeman*, (1874), 21 Gr. 250; *Hyman v. Cuthbertson*, (1886), 10 O. R. 443; *Ross v. Dunn*, (1889), 16 O. R. 552.

**Sale or transfer in contemplation of insolvency. Presumption if within thirty days.** 98. If any sale, deposit, pledge, or transfer is made of any property, real or personal, by a company in contemplation of insolvency under this Act, by way of security for payment to any creditor, or if any property, real or personal, moveable or immovable, goods, effects, or valuable security, are given by way of payment by such company to any creditor, whereby such creditor obtains or will obtain an unjust preference over the other creditors, such sale, deposit, pledge, transfer, or payment shall be null and void; and the subject thereof may be recovered back for the benefit of the estate by the liquidator, in any court of competent jurisdiction. 2. If such sale, deposit, pledge, or transfer is made within thirty days next before the commencement of the winding-up under this Act, or at any time afterwards, it shall be presumed to have been so made in contemplation of insolvency.

R. S., c. 129, § 71. Where shares were transferred within one month before suspension of a bank, both transferee and the transferor who had, in turn, also acquired the shares within the month, were held liable as contributories. — *In re Central Bank, Henderson's Case*, (1889), 17 O. R. 110. For a case where repayment to depositors of the amount of their deposits obtained through fraud, was not regarded as a preferential payment, see *In re Central Bank of Canada, Well's & MacMurphy's Case*, (1888), 15 O. R. 611. The case of *Davidson v. Ross*, (1876), 24 Gr. 22, decided that the doctrine of pressure had no application to this section. Although *Davidson v. Ross* was decided under a former insolvency Act (32 & 33 Vic. c. 13) the wording of the section under which it was decided was, in all material respects, identical with the wording of this section. Cp. the wording of the statute upon which *Molson Bank v. Holter*, (1890), 18 S. C. R. 88, and *Stevens v. McArthur*, (1891), 19 S. C. R. 446, were decided contra. Masten submits "that the decision on the Ontario Assignments Act and similar enactments as to pressure do not apply to this section, and that *Davidson v. Ross* is still good law, and that therefore under the above enactments pressure will not validate a transaction whereby such creditors obtains or will obtain an unjust preference." — *Company Law*, pp. 662, 663. See also *Adams v. McCall*, (1866), 25 U. C. Q. B. 219. For further cases on the subject see: *Ivery v. Knox*, (1885), 8 O. R. 635; *Long v. Hancock*, (1885), 12 O. A. R. 137; *Johnson v. Hope*, (1890), 17 O. A. R. 10; *Davies v. Gillard*, (1891), 21 O. R. 431; *Lawson v. McGeoch*, (1893), 20 O. A. R. 464; *Beattie v. Wenger*, (1897), 24 O. A. R. 72. *Webster v. Crickmore*, (1898), 25 O. A. R. 97. Where an agreement to give security for advances was made more than thirty days before commencement of the winding-up, a subsequent transfer made in pursuance of such an agreement is not a preference, even though made within thirty days before commencement of the proceedings. — *Suter v. Merchant Bank*, (1876), 24 Gr. 365; see also *Newton v. Ontario Bank*, (1867), 13 Gr. 652; *Allan v. Clarkson*, (1870), 17 Gr. 570; *Smith v. McLean*, (1878), 25 Gr. 567. But see *Kalus v. Hergert*, (1876), 1 O. A. R. 75, where a mortgage given to secure a pre-existing debt and to cover future advances, was held fraudulent.

lent because such advances were not made with the bona fide belief that the business would be continued. So, where the giving of security was deliberately postponed in order to avoid injury to the borrower's credit or to avoid the statutory presumption of intention to give a preference, the giving of such security constituted a preference. — *Webster v. Crickmore*, (1898), 25 O. A. R. 97; and see *Jones v. Kinney*, (1884), 11 S. C. R. 708. As to the meaning of the phrase "in contemplation of insolvency," see *National Bank of Australasia v. Morris*, (1892) A. C. 287. As to the meaning of the phrase "under this Act," see *Davidson v. Ross*, (1876), 24 Gr. 22, at p. 69. For further cases on "unjust preference," see: *Churcher v. Cousins*, (1869), 28 U. C. Q. B. 540; *Newton v. Ontario Bank*, (1867), 13 Gr. 652; *Campbell v. Barrie*, (1871), 31 U. C. Q. B. 279, at p. 291. The presumption referred to in the second part of this section is rebuttable. — In *re Kirby & Rathbun Co.*, (1900), 32 O. R. 9. The Master to whom the court has delegated its powers for the purpose of winding-up is not a "court of competent jurisdiction" within the meaning of this section for the purpose of trying questions of fraudulent transfers of property. — *Hart v. Ontario Express & Transportation Co.*, (1894), 25 O. R. 247.

**Payments by company within thirty days. Restoration of security. 99.** Every payment made within thirty days next before the commencement of the winding-up under this Act by a company unable to meet its engagements in full, to a person knowing such inability, or having probable cause for believing the same to exist, shall be void, and the amount paid may be recovered back by the liquidator by suit or action in any court of competent jurisdiction. 2. If any valuable security is given up in consideration of such payment, such security or the value thereof shall be restored to the creditor upon the return of such payment.

R. S., c. 129, § 72. As to what is a "payment" within the meaning of this section, see *The Exchange Bank of Canada v. Stinson*, (1885), 8 O. R. 667; *The Exchange Bank of Canada v. Counsell*, (1885), 8 O. R. 673; *Roe v. Royal Canadian Bank*, (1868), 19 U. C. C. P. 347, followed in *Roe v. Bank of British North America*, (1870), 20 U. C. C. P. 351. As to the meaning of "valuable security," see *Beattie v. Wenger*, (1897), 24 O. A. R. 72. *Cp. Churcher v. Johnston*, (1874), 34 U. C. Q. B. 528; In *re Wallis*, (1869), 29 U. C. Q. B. 313. In *re Central Bank, Cayley's Case* (1889), 17 O. R. 122, it was held that, upon the facts of the case the withdrawal by a depositor of money deposited in a bank did not come within the meaning of any of the provisions of the Act relating to fraudulent preferences. Where a president of a company invested funds in his company for which he was trustee and, on the eve of the company being wound up, withdrew the same to protect his *cestuis que trustent*, it was held that § 99 of this Act applied and that the company was entitled to recover the amount so withdrawn. — *Trusts & Guarantee Co., v. Munro*, (1909), 14 O. W. R. 699.

**Debts of company transferred to contributories or persons indebted to the company. 100.** When a debt due or owing by the company has been transferred within the time and under the circumstances in the last preceding section mentioned, or at any time afterwards, to a contributory, or to any person indebted or liable in any way to the company, who knows or has probable cause for believing the company to be unable to meet its engagements, or in contemplation of its insolvency under this Act, for the purpose of enabling such contributory, or such person so indebted or liable to the company, to set up, by way of compensation or set-off, the debt so transferred, such debt shall not be set up by way of compensation or set-off against the claim upon such contributory or person.

R. S., c. 129, § 73; 52 Vic. c. 32, § 16. *Cp. R. S. c. 129, § 73* under which it was held that the prohibition against acquiring debts for the purpose of set-off was limited to the case of contributories. — In *re Central Bank of Canada, York's Case*, (1888), 15 O. R. 625, following *Ings v. Bank of Prince Edward Island*, (1885), 11 S. C. R. 265. The present statute was amended to read "to any contributory or any person indebted or liable to the company." See notes § 71, *supra*.

### Appeals.

**Appeals in case of future rights, principle, amount. 101.** Except in the Northwest Territories, any person dissatisfied with an order or decision of the court or a single judge in any proceeding under this Act may: a) If the question to be raised on the appeal involves future rights; or, b) If the order or decision is likely to affect other cases of a similar nature in the winding-up proceedings; or, c) If the amount involved in the appeal exceeds five hundred dollars; by leave of a judge of the court, appeal therefrom.

R. S., c. 129, § 74. For circumstances under which leave to appeal will be granted, see In *re Central Bank*, (1897), 17 O. P. R. 370. For an example of an appeal "involving future rights," see In *re Union Fire Insurance Co.*, (1886), 13 O. A. R. 268, at pp. 294, 295. An appeal lies from an original winding-up order under this section. — In *re Union Fire Insurance Co.*, *supra*. The procedure for appeals provided in §§ 101—106 of this Act does not include appeals from the Master or Referee to whom the winding-up has been referred as such appeals to the court lie as of right. — *Markle v. Ross*, (1889), 13 O. P. R. 135, see also *Hogaboom's Case*, (1897), 19 C. L. T. 66.



An appeal does not lie from an order giving leave to appeal. — In *re Central Bank*, (1897), 17 O. P. R. 395. So, where an application for leave to appeal to the Court of Appeals from a decision in a matter under the Winding-up Act has been made to a Judge of the High Court and refused by him, a second application will not be entertained by another Judge, and no appeal lies from that decision. — In *re Sarnia Oil Co.*, (1893), 15 O. P. R. 347. An order for winding-up a company doing business in Ontario made by one Judge will not be set aside by another. An application for that purpose must be made to the Divisional Court. — In *re Lake Superior Copper Co., Ltd., re Plummer*, (1885), 9 O. R. 277, at pp. 280, 281. An application by persons who were placed on the list of contributories for an order that they be allowed to shew cause why they should not be placed on the list of contributories, must be made to the Judge in Court who made the original order. — In *re Wade Co. Ltd.*, (1909), 2 Alb. 117, 10 West. L. R. 527. — The trial of a petition before a Judge at the Assizes praying that a liquidator might be ordered to deliver up certain lumber claimed by a bank, is not the trial of an action, and therefore no appeal lies to the Divisional Court; such an appeal should be taken to the Court of Appeals. — In *re Rainy Lake Lumber Co.*, (1887), 12 O. P. R. 27. The amount involved must exceed \$ 500 exclusive of interest and costs. — In *re Wiarton Beet Sugar Co.*, *Kydd's Case*, (1905), 6 O. W. R. 590.

**Court. 102.** [As amended by 7 & 8 Edw. 7, c. 2, § 10.] Such appeal shall lie: a) In Ontario, to the Court of Appeal; b) In Quebec, to the Court of King's Bench; c) In Manitoba, to the Court of Appeal; d) In British Columbia, to the Court of Appeal, and e) In any of the other Provinces, or the Yukon Territory, to a superior court in banc.

**Northwest Territories. 103.** In the Northwest Territories, any person dissatisfied with an order or decision of the court or a single judge, in any proceeding under this Act may, by leave of a judge of the Supreme Court of Canada, appeal therefrom to the Supreme Court of Canada.

R. S., c. 129, § 74.

**Practice. Security. 104.** All appeals shall be regulated, as far as possible, according to the practice in other cases of the court appealed to, but no appeal hereinbefore authorized shall be entertained unless the appellant has, within fourteen days from the rendering of the order or decision, or within such further time as the court or judge appealed from, or, in the Northwest Territories, a Judge of the Supreme Court of Canada, allows, taken proceedings therein to perfect his appeal, nor unless, within the said time, he has made a deposit or given sufficient security, according to the practice of the court appealed to, that he will duly prosecute the said appeal and pay such damages and costs as may be awarded to the respondent.

R. S., c. 129, § 74.

**Dismissing appeal. 105.** If the party appellant does not proceed with his appeal, according to this Act and the rules of practice applicable, the Court appealed to, on the application of the respondent, may dismiss the appeal with or without costs.

R. S., c. 129, § 75.

**Appeal to Supreme Court of Canada. 106.** [As amended by 9 & 10 Edw. 7, c. 62, § 2.] An appeal, if the amount involved therein exceeds two thousand dollars, shall, by leave of a Judge of the Supreme Court of Canada, lie to that Court from: a) The Court of Appeal in the Provinces of Ontario, Manitoba, and British Columbia; b) The Court of King's Bench in Quebec; or, c) A superior court in banc, in any of the other Provinces, or in the Yukon Territory.

R. S., c. 129, § 76. A judgment refusing to set aside a winding-up order does not involve any amount, and leave to appeal therefrom can not be granted. — *Cushing Sulphite Fibre Co., v. Cushing*, (1906), 37 S. C. R. 427. Where six persons were placed on the list of contributories, one for \$ 1000 and the others for \$ 900 each, it was held that the amount involved in such an appeal did not exceed \$ 2000 so as to give the Supreme Court jurisdiction; the position was the same as if proceedings had been taken separately against each contributory. — *Stevens v. Gerth*, In *re The Ontario Express & Transportation Co.*, (1895), 24 S. C. R. 716. Leave to appeal *per saltum* under the Supreme Court Act (R. S. C. c. 139, § 42), can not be granted in a case under the Winding-up Act. An application for leave to appeal from a judgement of the Supreme Court of New Brunswick was refused when the judge had made no formal order on the petition for a winding-up order and the proceedings before were in the nature of a reference rather than an appeal from his decision. — In *re Cushing Sulphite Fibre Co.*, (1905), 36 S. C. R. 494. For practice in obtaining an order for extending the time for appeal, see *Ontario Bank v. Chaplin*, (1890), 20 S. C. R. 152.

#### *Procedure.*

**Describing liquidator. 107.** In all proceedings connected with the company, a liquidator shall be described as the liquidator of the (*name of company*), and not by his individual name only.

R. S., c. 129, § 29; Imp. § 149 (9).



**Similar to ordinary suit. 108.** The proceedings under a winding-up order shall be carried on as nearly as may be in the same manner as an ordinary suit, action, or proceeding within the jurisdiction of the Court.

52 Vic. c. 32, § 21. Service of petition for winding-up upon an assignee for the creditors of the company is not service upon the company. — *In re Rodney Casket Co.*, (1906), 12 O. L. R. 409.

**Powers of court exercised by a single Judge. 109.** The powers conferred by this Act upon the Court may, subject to the appeal in this Act provided for, be exercised by a single Judge thereof; and such powers may be exercised in chambers, either during term or in vacation.

R. S., c. 129, § 77. Note that since the amendment of 52 Vic. c. 32, § 20, a winding-up order can only be made by a Judge and no longer by the Master in Chambers, the Master in Ordinary, or the Local Master. See *In re Queen City Refining Co.*, (1884), 10 O. P. R. 415.

**Court may refer matters. 110.** After a winding-up order is made the Court may, subject to an appeal according to the practice of the court in like cases, from time to time as to the Court may seem meet, by order of reference, refer and delegate, according to the practice and procedure of the Court, to any officer of the Court any of the powers conferred upon the Court by this Act.

52 Vic. c. 32, § 20. Where a claim is made for rent and the liquidator attacks it on the ground that the conveyance under which the claimant assumes to be the owner of the premises is a fraudulent preference and that the alleged lease was never executed, the Master has no jurisdiction to adjudicate upon this issue. The proper way is for the liquidator to proceed by action under § 34 of this Act. — *In re Sun Lithographing Co.*, *Farquhar's Claim*, (1892), 22 O. R. 57. Neither is the Master in Ordinary a competent tribunal to decide questions of fraudulent transfers arising in the course of a reference in winding-up proceedings. — *Harte v. Ontario Express & Transportation Co.*, *Molson's Bank Case*, (1894), 25 O. R. 247.

**Service of process out of jurisdiction. 111.** The Court shall have the power and jurisdiction to cause or allow the service of process or proceedings under this Act to be made on persons out of the jurisdiction of the court, in the same manner, and with the like effect, as in ordinary actions or suits within the ordinary jurisdiction of the Court.

52 Vic. c. 32, § 19. This section renders obsolete *British Canadian Lumbering Co. v. Grant*, (1887), 12 O. P. R. 301.

**Order of court to be deemed judgment. 112.** Every order of the court or judge for the payment of money or costs, charges or expenses made under this Act shall be deemed a judgment of the court, and may be enforced against the person or goods and chattels, lands and tenements of the person ordered to pay, in the manner in which judgments or decrees of any superior court obtained in any suit may bind lands or be enforced in the Province where the court making the same is situate.

58 & 59 Vic. c. 18, § 1.

**Ordinary practice in case of discovery available. 113.** The practice with respect to the discovery of assets of judgment debtors, from time to time in force in the superior courts or in any superior court in the Province where any such order is made, shall be applicable to and may be availed of in like manner for the discovery of the assets of any person who by such order is ordered to pay any money or costs, charges, or expenses.

58 & 59 Vic. c. 18, § 1.

**Attachment and garnishment of debts. 114.** Debts due to any person against whom such order for the payment of money, costs, or expenses has been obtained, may, in any Province where the attachment and garnishment of debts is allowed by law, be attached and garnished in the same manner as debts in such Province due to a judgment debtor may be attached and garnished by a judgment creditor.

R. S., c. 129, § 79.

**Witnesses' attendance, how secured. 115.** In any action, suit, proceeding or contestation under this Act, the court may order the issue of a writ of subpoena ad testificandum or of subpoena duces tecum, commanding the attendance, as a witness, of any person who is within Canada.

R. S., c. 129, § 80.

**Arrest of absconding contributory or official and seizure of his goods, chattels and books. 116.** The court may, at any time before or after it has made a winding-up order, upon proof being given that there is reasonable cause for believing that any contributory or any past or present director, manager, officer, or employee of the company is about to quit Canada or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such person

to be arrested, and his books, papers, moneys, securities for money, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court orders.

R. S., c. 129, § 52. The order of arrest should be made upon affidavit of the liquidator or some one acquainted with the facts. For requirements of the affidavit, see *Central Bank v. Earl*, (1889), 28 N. B. 173.

**Examination of persons having effects of company or information.** 117. The Court may, after it has made a winding-up order, summon before it or before any person named by it, any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, estate, or effects of the company.

R. S., c. 129, § 81; Imp. § 174 (1).

**Person summoned refusing to attend.** 118. If any person so summoned, after being tendered a reasonable sum for his expenses, refuses, without a lawful excuse, to attend at the time appointed, the Court may cause such person to be apprehended and brought up for examination.

R. S., c. 129, § 81; Imp. § 174 (4).

**Production of papers.** 119. The Court may require any such officer or person to produce before the court, any book, paper, deed, writing, or other document in his custody or power relating to the company.

R. S., c. 129, § 81; Imp. § 174 (3).

**Lien on documents.** 120. If any person claims any lien on papers, deeds, writings, or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

R. S., c. 129, § 81. See, *In re Boston Wood Rim Co.*, (1905), 5 O.W. R. 149, for classes of documents to which solicitor's lien attaches.

**Examination on oath.** 121. The Court or person so named may examine, upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought up in manner aforesaid, concerning the affairs, dealings, estate, or effects of the company, and may reduce to writing the answers of any such person, and require him to subscribe the same.

R. S., c. 129, § 82; Imp. § 174 (2).

**Inspection of books and papers. Limitation of inspection.** 122. After a winding-up order has been made, the Court may make such order for the inspection, by the creditors, shareholders, members, or contributories of the company, of its books and papers, as the Court thinks just. 2. Any books and papers in the possession of the company may be inspected in conformity with the order of the Court, but not further or otherwise.

R. S., c. 129, § 54; Imp. § 221.

**Officer of company misapplying money. Order compelling repayment.** 123. When in the course of the winding-up of the business of a company under this Act, it appears that any past or present director, manager, liquidator, receiver, employee, or officer of such company has misapplied or retained in his own hands, or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally liable, examine into the conduct of such director, manager, liquidator, receiver, officer, or employee, and, upon such examination, may make an order requiring him to repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest, at such rate as the Court thinks just, or to contribute such sums of money to the assets of the company, by way of compensation in respect of such misapplication, retention, misfeasance, or breach of trust, as the Court thinks fit.

R. S., c. 129, § 83; Imp. § 217. Where a director of an insolvent company withdraws money as remuneration, to which it is claimed he is not entitled, the Master has jurisdiction by virtue of this section to make inquiry into the matter. — *In re Bolt & Iron Co.*, *Livingston's Case*, (1887), 14 O. R. 211; affirmed on appeal, (1889), 16 O. A. R. 397. Where a director of a company having a judgment and execution against property of the company, acting in good faith, purchased the same at a sale by the mortgagee under a power of sale and re-sold it at a profit, he was held a trustee of the property for the benefit of the company and, as such, was liable to the liquidator for the profit made on the re-sale. — *In re Iron Clay Brick Manufacturing Co.*, *Turner's Case*, (1889), 19 O. R. 113; *In order*



to make a director liable under this section it must not only be shown that he was guilty of some misfeasance but that the misfeasance resulted in damage to the company. — In *re Manes Tailoring Co.*, (1908), 11 O. W. R. 498, at p. 500. For other cases involving the liability of directors and promoters to the company see: *Earle v. Burland*, (1889), 27 O. A. R. 561, (sale to company at secret profit); *Thompson v. Brantford, etc., Co.*, (1898), 25 O. A. R. 340, (unauthorized purchase by manager); *Highway Advertising Co. v. Ellis*, (1903), 7 O. L. R. 504, (sale to company before commencement of fiduciary relation); *Wade v. Kendrick*, (1905), 37 S. C. R. 32, (unauthorized expenditures by directors); *O'Sullivan v. Clarkson*, (1907), 9 O. W. R. 46, (damage to company from false representations by officers); In *re Lake Ontario Navigation Co.*, *Hutchinson's Case*, (1909), 13 O. W. R. 1037, (liability of director for arrangement with subscriber to stop payment of cheque given in payment for shares); In *re Manes Tailoring Co.*, (1909), 13 O. W. R. 829, (misfeasance of directors in allotment of shares as fully paid up). Where a director transferred bonus shares to third persons under such circumstances that the latter could not be held liable as contributories, he was held liable, under this section, for the amount unpaid on the stock. — In *re Wiarton Beet Sugar Co.*, *Freeman's Case*, (1906), 12 O. L. R. 149. In *re Peterborough Cold Storage Co.*, (1907), 14 O. L. R. 475, directors were held liable for losses resulting from transfers of stock to irresponsible transferees. Where a director issued to himself partly paid up stock and subsequently transferred such stock to another director who had knowledge of all facts, the transferor was held liable only for the amount actually received and not for the par value of the stock, since the company had not suffered loss, the transferee not being a purchaser without notice and therefore subject to liability for calls. — In *re Manes Tailoring Co.*, (1908), 11 O. W. R. 498. Upon question of parties in suit between a shareholder and director for breach of trust, see In *re Farmer's Loan*, *Ex parte Toogood*, (1898), 8 O. W. R. 12.

**Dispensing with notice.** 124. The Court may, by any order made after the winding-up order and the appointment of a liquidator, dispense with notice to creditors, contributories, shareholders, or members of the company required by this Act, where in its discretion such notice may properly be dispensed with.

52 Vic. c. 32, § 11. This section does not extend to dispensing with notice of appointment of liquidators required under § 27, *supra*. See *Stimson v. Northwest Cattle Co.*, (1905), Q. R. 14 K. B. 274.

**Courts and judges auxiliary. Transfer from one Court to another.** 125. The Courts of the various Provinces, and the Judges of the said Courts respectively, shall be auxiliary to one another for the purposes of this Act; and the winding-up of the business of the company or any matter or proceeding relating thereto may be transferred from one Court to another with the concurrence, or by the order or orders of the two Courts, or by an order of the Supreme Court of Canada.

R. S., c. 129, § 84. In *Baxter v. Central Bank*, (1890), 20 O. R. 214, an injunction was granted to restrain proceedings in a Montreal Court against a bank in process of being wound-up in Ontario under the Dominion Act. "Meredith, C. J., held in 1905, however, In *re Canada Cork Co.*, (unreported), that such an order would not be made unless evidence was given that the Court in the other Province had received notice of the winding-up order, and had refused to take cognizance of it." — *Parker and Clarke, Company Law*, p. 528.

**Order of one Court may be enforced by another.** 126. When any order made by one Court is required to be enforced by another Court, an office copy of the order so made, certified by the clerk or other proper officer of the Court which made the same, under the seal of such Court shall be produced to the proper officer of the Court required to enforce the same.

R. S., c. 129, § 85.

**Proceeding on order of another Court.** 127. Such last mentioned Court shall, upon such production of the said certified copy of such order, take the same proceedings thereon for enforcing the order as if it was the order of the Court required to enforce it.

R. S., c. 129, § 85.

**Rules as to amendments. Authority to apply.** 128. The rules of procedure, for the time being, as to amendments of pleadings and proceedings in the Court, shall apply, as far as practicable, to all pleadings and proceedings under this Act. 2. Any Court before which such proceedings are being carried on shall have full power and authority to apply to such proceedings the appropriate rules of such Court as to amendments.

R. S., c. 129, § 86. "It plain, I think, that section 86 (section 128 of the present Act) refers to amendments only." — Per Ferguson J. in *re Sun Lithographing Co.*, (1902), 22 O. R. 57, at p. 62.

**Irregularity or default.** 129. No pleading or proceeding shall be void by reason of any irregularity or default which may be amended or disregarded; but the same may be dealt with according to the rules and practice of the Court in cases of irregularity or default.

R. S., c. 129, § 87.

**Powers conferred by this Act are supplementary.** 130. Any powers by this Act conferred on the Court are in addition to, and not in restriction of any other powers at law or in equity of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company, or his estate, for the recovery of any call or other sum due from such contributory, debtor, or estate; and such proceedings may be instituted accordingly.

R. S., c. 129, § 90.

**Wishes of creditors.** 131. The Court may, as to all matters relating to the winding-up, have regard, so far as it deems just, to the wishes of the creditors, contributories, shareholders, or members, as proved to it by any sufficient evidence.

R. S., c. 129, § 19; Imp. § 201.

**Solicitors and counsel representing classes of creditors.** 131A. [Added by 6 & 7 Edw. 7, c. 51, § 1.] The Court if satisfied that, with respect to the whole or any portion of the proceedings, the interests of creditors, claimants, or shareholders can be classified, may, after notice by advertisement or otherwise, nominate and appoint a solicitor and counsel to represent each or any class for the purpose of the proceedings, and all the persons composing any such class shall be bound by the acts of the solicitor and counsel so appointed, and service upon such solicitor of notices, orders, or other proceedings of which service is required, shall for all purposes be, and be deemed to be, good and sufficient service thereof upon all the persons composing the class represented by him; and the Court may, by the order appointing a solicitor and counsel for any class, or by subsequent order, provide for the payment of the costs of such solicitor and counsel by the liquidator of the company out of the assets of the company, or out of such portion thereof as to the Court seems just and proper.

See notes § 61, *supra*.

**Liquidator subject to summary jurisdiction of Court.** 132. The liquidator shall be subject to the summary jurisdiction of the Court in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction; and the performance of his duties may be compelled by order of the Court.

R. S., c. 129, § 39. See notes § 34, *supra*.

**Remedies obtained by summary order.** 133. All remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, lien, or right of property upon, in, or to any effects or property in the hands, possession, or custody of a liquidator, may be obtained by an order of the Court on summary petition, and not by any action, suit attachment, seizure, or other proceeding of any kind whatsoever.

R. S., c. 129, § 39. Where the president of a company, who is a mortgagee of the company, presented a petition asking for an order directing the conveyance to him by the liquidator of the company's equity of redemption, it was held that the Court had jurisdiction to make the usual order for foreclosure and sale, and that it was a matter of discretion whether it would order summary proceedings under this section, or whether it would direct an action to be taken. — In *re Essex Land & Timber Co.*, Trout's Case, (1891), 21 O. R. 367. The summary action provided for in this section may only be exercised when the liquidator is the sole person interested in the mortgaged property. This section does not apply where prior and subsequent mortgagees are concerned. — In *re Canada Cabinet Co.*, (1907), 9 O. W. R. 818; Cp. §§ 80 and 81, *supra*. In *re Tobique Gypsum Co.*, Costigan v. Langly, (1903), 6 O. L. R. 515, it was held that while the High Court of Ontario had jurisdiction, under the Winding-up Act, to stay proceedings under an execution in the hands of the sheriff in a county of New Brunswick still, where the sheriff had proceeded with the sale, and had executed a deed to the purchaser, the Court had no jurisdiction to make an order summarily declaring the sale void.

#### *Rules, regulations, and forms.*

**Judges may make; proviso.** 134. A majority of the Judges of the Court, of which the Chief Justice shall be one, may, from time to time make and frame and settle the forms, rules, and regulations to be followed and observed in proceedings under this Act, and make rules as to the costs, fees, and charges which shall or may be had, taken, or paid in all such cases by or to attorneys, solicitors, or counsel, and by or to officers of Courts, whether for the officers or for the Crown, and by or to sheriffs, or other persons, or for any service performed or work done under this Act: Provided that in Ontario the Judges of the High Court of Justice, and in Quebec, the Judges of the Court of King's Bench, or a majority of such Judges of which the Chief Justice shall be one, shall make and settle such forms, rules, and regulations.

R. S., c. 129, § 92; Imp. § 237.



**Until rules are made, procedure of Court to apply.** 135. Until such forms, rules, and regulations are made, the various forms and procedures, including the tariff of costs, fees, and charges in cases under this Act, shall, unless otherwise specially provided, be the same as nearly as may be as those of the Court in other cases.

R. S., c. 129, § 93.

*Unclaimed deposits.*

**Unclaimed dividends to remain in bank ; and paid to Minister after three years ; if afterwards claimed.** 136. All dividends deposited in a bank and remaining unclaimed at the time of the final winding-up of the business of the company shall be left for three years in the bank where they are deposited, subject to the claim of the persons entitled thereto. 2. If such dividends are unclaimed at the expiration of three years aforesaid they shall be paid over by such bank, with interest accrued thereon, to the Minister. 3. If such dividends are afterwards duly claimed they shall, with such interest, be paid over to the persons entitled thereto.

R. S., c. 129, § 94; Imp. § 224. Where the liquidators had passed in their final accounts and paid into Court the balance in their hands and, before the expiration of three years, that balance had inadvertently been paid to parties not entitled to it, it was held that the Receiver-General had such an interest in the fund that he might, even before the expiration of the three years, apply to have the money repaid into Court by the parties to whom it had been erroneously paid. — *Hogaboom v. The Receiver-General of Canada*, (1897), 28 S. C. R. 192.

**Money deposited not paid after three years to be paid to Minister of Finance.** 137. The money deposited in the bank by the liquidator after the final winding-up of the business of a company shall be left for three years in the bank, subject to be claimed by the persons entitled thereto, and if not then paid out to such persons, shall be then paid over, with the interest accrued thereon, to the Minister, and if afterwards claimed shall be paid, with such interest, to the persons entitled to the same.

R. S., c. 129, § 41.

*Offences and penalties.*

**Court may direct criminal proceedings.** 138. When a winding-up order is made, if it appears in the course of such winding-up that any past or present director, manager, officer, or member of the company is guilty of an offence in relation to the company for which he is criminally liable, the Court may, on the application of any person interested in such winding-up, or of its own motion, direct the liquidator to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

R. S., c. 129, § 96; Imp. § 138.

**Destruction of books or false entry therein.** 139. Every person who, with intent to defraud or deceive any person, destroys, mutilates, alters, or falsifies any book, paper, writing, or security, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or other document belonging to the company, the business of which is being wound up under this Act, is guilty of an indictable offence and liable to imprisonment in the penitentiary for any term not less than two years, or to imprisonment in any gaol or in any place of confinement than a penitentiary for any term less than two years, with or without hard labour.

R. S., c. 129, § 95; Imp. § 216. See also Criminal Code (R. S. C. c. 146) § 415, which renders an officer or employee of the company guilty of such an offence liable to seven years' imprisonment.

**Failure to comply with order of Court a contempt. Removal of liquidator from office.** 140. Any liquidator, director, manager, receiver, officer, or employee of a company, failing to comply with the requirements or directions of any order made by the Court under this Act, shall be guilty of contempt of court and shall be subject to all process and punishments of such Court for contempt. 2. Any liquidator so failing may in the discretion of the Court be removed from office as such liquidator.

R. S., c. 129, §§ 38, 39, 40, 83; Imp. § 178.

**Refusal by officers of company to give information; penalty.** 141. Any refusal on the part of the president, directors, officers, or employees of a company to give all information possessed by them respectively as to the affairs of the company required by the accountant or other person ordered by the Court under this Part to inquire into the affairs of the company and to report thereon, shall be a

contempt of court, and such president, directors, officers, or employees shall be subject to all process and punishments of such Court for contempt.

R. S., c. 129, § 11.

**Failure to deposit in bank money of estate; penalty. 142.** Every liquidator who shall not within three days after the date of the final winding-up of the business of the company, deposit in the bank appointed or designated as hereinbefore provided, any money belonging to the estate of which he is such liquidator, then in his hands, and not required for any other purpose authorized by this Act, with an account of such money, and a sworn statement that the same is all that he has in his hands, shall incur a penalty not exceeding ten dollars, and not less than ten per centum per annum interest upon the sums in his hands for every day after the expiration of the said three days on which he neglects or delays such payment.

R. S., c. 129, § 40.

**Refusal of witness to answer or subscribe is a contempt. 143.** Every person being brought up for examination before the Court after the Court has made a winding-up order, or appearing before the Court for such examination, who refuses without lawful excuse to answer any question put to him or to subscribe any answer made by him on such examination, shall be guilty of contempt of court and shall be subject to all process and punishments of such Court for contempt.

R. S., c. 129, § 82.

#### *Evidence.*

**Books to be prima facie evidence of contents. 144.** If the business of a company is being wound up under this Act, all books of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

R. S., c. 129, § 53; Imp. § 220.

**Affidavits, before whom sworn. 145.** Every affidavit, affirmation, or declaration required to be sworn or made under the provisions or for the purposes of this Act, or to be used in the Court in any proceeding under this Act, may be sworn or made in Canada before a liquidator, judge, notary public, commissioner for taking affidavits, or justice of the peace; and out of Canada, before any judge of a court of record, any commissioner for taking affidavits to be used in any Court in Canada, any notary public, the chief municipal officer of any town or city, any British consul or vice-consul, or any person authorized by or under any statute of Canada, or of any Province, to take affidavits.

R. S., c. 129, § 88.

**Judicial notice of seals, stamp, or signature. 146.** All Courts, Judges, Justices, commissioners and persons acting judicially shall take judicial notice of the seal, or stamp or signature, as the case may be, of any such Court, liquidator, Judge, notary public, commissioner, justice, chief municipal officer, consul, vice-consul, or other person, attached, appended or subscribed to any such affidavit, affirmation or declaration or to any other document to be used for the purposes of this Act.

R. S., c. 129, § 89.

**Copy of order evidence of order. 147.** When any order made by one Court is required to be enforced by another Court, the production of an office copy of the order so made certified by the clerk or other proper officer of the Court which made the same, under the seal of such Court, shall be sufficient evidence of such order having been made.

R. S., c. 129, § 85.

**Failure to produce pass-book, how proved. 148.** The absence of mention in the minutes of any meeting of contributories, creditors, shareholders or, members under this Act, of the production of the liquidator's bank pass-book, shall be prima facie evidence that such pass-book was not produced at such meeting.

R. S., c. 129, § 37.

### *Part II. Banks.*

**Application of Part. 149.** The provisions of this Part apply to banks only, not including savings banks.

R. S., c. 129, § 97. Note that savings banks are subject to provisions of Part I. A bank cannot be wound up under the Act until provisions of Part I are complied with. — In re Bank of Liverpool, (1887), 14 S. C. R. 650. See the following cases touching insolvent banks: Cloyes v. Darling, (1884), 16 Rev. Leg. 649; Exchange Bank v. The Queen, (1885), 11 A. C. 157; The Queen v. Bank of Nova Scotia, (1885), 11 S. C. R. 1; Maritime Bank v. The Queen, (1888), 17 S. C. R. 657; In re Central Bank, Henderson's Case (1889), 17 O. R. 110; In re Central Bank,



*Baine's Case*, (1889), 16 O. A. R. 237; *In re Central Bank, Ley's Claim*, (1892), 22 O. R. 247; *In re Central Bank of Canada, Grand Trunk Railway Company's Claim*, (1888), 6 O. W. R. 372; *Kent v. Bastien*, (1902), Q. R. 12 K. B. 120; *La Banque Ville Marie v. Kent*, (1901), 4 Q. P. R. 429; *Kent v. Sisters of Charity*, (1903) A. C. 220; *Kent v. Monroe*, (1904), 4 O. W. R. 469.

**Creditor for what amount to apply.** 150. The application for a winding-up order shall be made by a creditor for a sum of not less than one thousand dollars.

R. S., c. 129, § 98. See notes § 11, *supra*.

**Direction of Court for meeting of shareholders and creditors.** 151. The Court shall, before making the order, direct a meeting of the shareholders of the bank and a meeting of the creditors of the bank to be summoned, held, and conducted as the Court directs, for the purpose of ascertaining their respective wishes as to the appointment of liquidators.

R. S., c. 129, § 98.

**Chairman at meetings of shareholders.** 152. The Court may appoint a person to act as chairman of the meeting of shareholders, and in default of such appointment, the president of the bank, or other person who usually presides at a meeting of shareholders, shall be chairman.

R. S., c. 129, § 99.

**Chairman of meeting of creditors.** 153. The Court may also appoint a person to act as chairman of the meeting of creditors, and in default of such appointment, the creditors at the meeting shall appoint a chairman.

R. S., c. 129, § 99.

**Voting as bank meeting.** 154. In taking a vote at the meeting of shareholders, regard shall be had to the number of votes conferred by law, or by the regulations of the bank, on each shareholder present or represented at such meeting.

R. S., c. 129, § 100.

**Voting regulated by debt.** 155. In taking a vote at the meeting of creditors, regard shall be had to the amount of the debt due to each creditor.

R. S., c. 129, § 100.

**Report to court. Appointment of liquidators.** 156. The chairman of each meeting shall report the proceedings of the meeting to the Court, and, if a winding-up order is made, the Court shall appoint one or more liquidators not exceeding three to be selected, in its discretion, after such hearing of the parties as it deems expedient, from among the persons nominated by the majorities and minorities of the shareholders and creditors at such meetings respectively.

R. S., c. 129, § 101; 52 Vic. c. 32, § 17. See notes § 24, *supra*.

**Court appoints.** 157. If no one has been so nominated, the liquidator or liquidators shall be chosen by the Court.

52 Vic. c. 32, § 18. See notes § 24, *supra*. When the double liability of the shareholders of a bank was likely to be called up, the nominee of the creditors was preferred to that of the shareholders. — *In re Central Bank*, (1887), 15 O. R. 309; and see *In re Bank of Liverpool*, (1889), 22 N. S. 97. There is nothing in the provisions of the Act which require that both creditors and shareholders should be represented on the board of liquidators. — *Forsythe v. Bank of Nova Scotia*, *In re Bank of Liverpool*, (1890), 18 S. C. R. 707. As to the discretion of the Court in appointing from those nominated by the shareholders and creditors, see notes § 24, *supra*.

**Reservation of dividends for outstanding notes applied to subsequently filed claims.** 158. The liquidators shall ascertain as nearly as possible the amount of notes of the bank intended for circulation and actually outstanding, and shall reserve dividends on any part of the said amount in respect of which claims are not filed, until the expiration of at least two years after the date of the winding-up order, or until the last dividend, if such last dividend is not made until after the expiration of the said time. 2. If claims are not filed and dividends applied for in respect of any part of the said amount before the period by this section limited, the dividends so reserved shall form the last or part of the last dividend.

R. S., c. 129, § 103.

**Publication of notices ; in Quebec, publication in English and French.** 159. Publication in the *Canada Gazette* and in the official gazette of each Province, and in two newspapers issued at or nearest to the place where the head office of a bank is situate, of notice of any proceeding of which, under this Act, creditors should be notified, shall be sufficient notice to holders of bank notes in circulation. 2. If the head office is situated in the Province of Quebec, one of the newspapers in which publication is to be made shall be a newspaper published in English and the other a newspaper published in French.

R. S., c. 129, § 104.

### *Part III. Life Insurance Companies.*

**Application of Part. 160.** The provisions of this Part apply only to life insurance companies, and to insurance companies doing life and other insurance, in so far as relates to the life insurance business of such companies.

R. S., c. 129, § 105.

**Company without license liable as for insolvency; exceptions. 161.** Whenever a license of a company has expired or been withdrawn under the Insurance Act, and has not been renewed within thirty days after such expiry or withdrawal, the company shall be subject to the provisions of this Act applicable to the case of insolvency of such a company, except in case of: a) A company which previously to the twenty-eighth day of April, one thousand eight hundred and seventy-seven, was licensed to transact the business of life insurance in Canada and ceased to transact such business before the twenty-first day of March, one thousand eight hundred and seventy-eight, having before that date given written notice to that effect to the Minister; or b) A company licensed under the Insurance Act to transact the business of life insurance in Canada which has, in manner provided by the said Act, procured the transfer of its outstanding policies in Canada to some company or companies licensed under the said Act, or obtained the surrender of its policies as far as practicable.

R. S., c. 129, § 106.

**Application of deposits and assets. 162.** In case of the insolvency of any company, the deposits of such company held by the Minister, and the assets held by the trustees under the Insurance Act, shall be applied pro rata towards the discharge of all claims of policy-holders in Canada duly authenticated against such company.

R. S., c. 129, § 107. Where Canadian policy holders petition for distribution of the deposit made by an insolvent foreign company with the Minister of Finance, it was held that they were entitled to the relief asked notwithstanding that the proceedings to wind up the company were pending before the English Courts. — *In re Briton Medical Association*, (1886), 12 O. R. 441. But see *Merchants Bank of Halifax v. Gillispie*, (1884), 10 S. C. R. 312; *Allan v. Hanson*, *In re Scottish Canadian Asbestos Co.*, (1890), 18 S. C. R. 667; *In re Doran*, (1901), 3 Q. P. R. 441. Upon the question of application of assets of an insolvent company, see *In re Covenant Mutual Life Association of Illinois*, (1902), 1 O. W. R. 392. See also *In re Merchants Life Association*, (1901), 1 O. L. R. 256, decided under the particular wording of the Ontario Insurance Act.

**Claims of policy-holders in Canada rank with judgments. 163.** Upon the insolvency of any company and the making of a winding-up order under this Act, the policy-holders in Canada shall be entitled to claim for the full net values, including bonus additions and profits accrued, of their several policies at the time of the winding-up order, less any amount previously advanced by the company on the security of the policies. 2. Such claims shall rank with judgments obtained and claims matured on Canadian policies, in the distribution of the assets.

R. S., c. 129, § 108.

**Valuation of policies; expenses. 164.** The liquidator may require the Superintendent of Insurance to value, or procure to be valued under his supervision, the policies of the policy-holders in Canada, on the basis prescribed in the Insurance Act. 2. The expenses of such valuation, at a rate of three cents for each policy or bonus addition so valued, shall be retained by the Minister from the securities held by him.

62 & 63 Vic. c. 43, § 6.

**Sale of securities and assets by order of the Court. 165.** Upon the completion by the liquidator of the statement to be prepared by him of all judgments against the company upon policies in Canada, and of all claims upon policies matured or outstanding, the Court shall cause the securities held by the Minister for such company, and the assets held by the trustees provided in the Insurance Act, or any part of them it deems fit, to be sold or realized in such manner and after such notice and formalities as the Court appoints.

R. S., c. 129, § 108.

**Distribution of proceeds. Recourse if proceeds do not cover claims. 166.** The proceeds so realized, after paying expenses incurred, shall, except in so far as they have been applied under this Act to effect a re-insurance of policies, be distributed pro rata amongst the claimants according to such statement. 2. If the proceeds are not sufficient to cover in full all claims recorded in the statement, such policy-holders shall not be barred from any recourse they have, either in law or equity,



against the company issuing the policy or against any shareholder or director thereof, other than for a share in the distribution of the proceeds aforesaid, or in respect to any distribution of the general property and assets of the company, other than the deposit and the assets vested in trustees.

R. S., c. 129, § 108.

**Claim on cancellation of policy or contract. 167.** Whenever the company or the liquidator, or the holder of the policy or contract of insurance exercises any right which it or he has to cancel any policy or contract, the holder shall be entitled to claim as a creditor for the sum which, under the terms of the policy or contract, is due to him upon such cancellation.

R. S., c. 129, § 109.

**Statement of creditors to be prepared by the liquidator. Proviso for contestation. 168.** The liquidator shall, without the filing of any claim, notice, or evidence, or the taking of any action by any person, make a statement of all the persons appearing by the books and records of the officers of the company to be creditors or claimants on any matured, valued, or cancelled policy or contract of insurance, and of the amount due to each such person in respect of such claims, and every such person shall be collocated and ranked as, and shall be entitled to the right of, a creditor or claimant for such amount, without filing any claim, notice, or evidence, or taking any action: Provided that any such collocation may be contested by any person interested, and any person who is not collocated, or who is dissatisfied with the amount for which he is collocated, may file his own claim.

R. S., c. 129, § 110.

**Copy of statement to be filed. Notice to be given publication. Notice to be given by mail. 169.** A copy of such statement, certified by the liquidator, shall, forthwith after the making of such statement, be filed in the office of the Superintendent of Insurance at Ottawa. 2. Notice of such filing shall forthwith be given by the liquidator by notice in the *Canada Gazette* and in the official gazette of each Province, and in two newspapers issued at or nearest to the place where the head office in Canada of the company is situate. 3. The liquidator shall also, forthwith, send by mail, prepaid, a notice of such filing to each creditor named in the statement, addressed to the addresses in Canada of such creditors, as far as the same are known, and, in the case of foreign creditors, addressed to the addresses of their representatives or agents in Canada, as far as the same are known.

R. S., c. 129, § 110.

**Claims accruing after the winding-up order, but within 30 days thereof. Claims accruing after 30 days. 170.** The holder of a policy or contract of life insurance, upon which a claim accrues after the date of the winding-up order and before the expiration of thirty days after the filing, in the office of the Superintendent of Insurance, of the statement referred to in the last preceding section, shall be entitled to claim as a creditor for the full net amount of such claim less any amount previously advanced by the company on the security of the policy or contract, and the said statement and the dividend sheet shall, if necessary, be amended accordingly. Provided that no claim which accrues after the expiration of the thirty days aforesaid shall rank upon the estate, unless nor until there is sufficient to pay all creditors in full.

R. S., c. 129, § 111.

**Holder giving notice of willingness to reinsure. Re-insurance must be part of general scheme. 171.** If, before the expiration of the thirty days hereinbefore mentioned, the holder of a policy or contract of life insurance, on which a claim has not accrued, signifies in writing to the liquidator his willingness to accept an insurance in some other company for the amount which can be secured by the dividend on his claim to which such holder is or may become entitled, the liquidator may, with the sanction of the Court, effect for such holder an insurance to the amount aforesaid in another company or companies, approved of by the Superintendent of Insurance, and may apply to that purpose the dividend on his claim to which such holder is or may become entitled: Provided that such insurance shall be effected only as part of a general scheme for the assumption, by some other company or companies, of the whole or part of the outstanding risks and liabilities of the insolvent company.

R. S., c. 129, § 112.

**Report to the Superintendent of Insurance. 172.** If the company is licensed under the Insurance Act, the liquidator shall report to the Superintendent of In-

surance once in every six months, or oftener as the Superintendent requires, on the condition of the affairs of the company, with such particulars as the Superintendent requires.

R. S., c. 129, § 113.

**What is sufficient notice to holders of policies. 173.** Publication in the *Canada Gazette*, and in the official gazette of each Province, and in two newspapers published at or nearest to the place where the head office in Canada of an insurance company is situate, of notice of any proceeding of which, under this Act, creditors should be notified, shall be sufficient notice to holders of policies or contracts of insurance in respect of which no notice of claim has been received.

R. S., c. 129, § 114.

#### *Part IV. Other than Life Insurance Companies.*

**Application of Part. 174.** The provisions of this Part apply only to insurance companies other than life insurance companies, and to insurance companies doing life and other insurance, in so far as relates to the insurance business of such companies which is not life insurance business.

R. S., c. 129, § 115.

**When a company shall be deemed insolvent. Time for notice to the Minister. 175.** Any company shall be deemed insolvent upon its failure to pay any undisputed claim arising, or loss insured against in Canada, upon any policy held in Canada for the space of sixty days after becoming due, or, if disputed, after final judgment and tender of a legal valid discharge, and in either case, after notice thereof to the Minister. 2. In any case when a claim for loss is, by the terms of the policy, payable on proof of such loss, without any stipulated delay, the notice to the Minister under this section shall not be given until after the lapse of sixty days from the time when the claim becomes due.

R. S., c. 129, § 116.

**Application of deposit held by Minister. 176.** Any deposit held by the Minister for policy-holders, shall be applied pro rata towards the payment of all claims duly authenticated against such company, upon or in respect of policies issued to policy-holders in Canada.

R. S., c. 129, § 117.

**Return premium ranks as judgment. 177.** Holders of policies or contracts of insurance on which no claim has accrued at the time the winding-up order is made, shall be entitled to claim as creditors, for such part of the premium paid, as is proportionate to the period of their policies or contracts respectively unexpired at the date of the winding-up order. 2. Such return or unearned premium shall rank with judgments obtained and claims accrued in the distribution of the assets.

R. S., c. 129, § 118.

**Sale of securities. Application of proceeds. Recourse in case of insufficiency of proceeds. 178.** Upon the completion of the statement to be prepared by the liquidator under this Act, the Court shall cause the securities held by the Minister for the company, or any part of them it deems fit, to be sold in such manner and after such notice and formalities as the Court appoints. 2. The proceeds thereof, after paying expenses incurred, shall, except in so far as they have been applied under this Act to effect a re-insurance of the policies, be distributed pro rata among the claimants according to such statement. 3. If the proceeds are not sufficient to cover in full all claims recorded in the statement, such policy-holders shall not be barred from any recourse they have, either at law or in equity, against the company issuing the policy, other than for a share in the distribution of the proceeds of the securities held for such company by the Minister.

R. S., c. 129, § 118.

**Claim when policy cancelled. 179.** Whenever the company or the liquidator, or the holder of the policy or contract of insurance, exercises any right which it or he has to cancel the policy or contract, the holder shall be entitled to claim as a creditor for the sum which, under the terms of the policy or contract, is due to him upon such cancellation.

R. S., c. 129, § 118.

**Statement to be made by liquidators. 180.** The liquidator shall, without the filing of any claim, notice, or evidence, or the taking of any action by any person,



make a statement of all the persons appearing, by the books and records of the officers of the company, to be creditors or claimants under the three last preceding sections, and of the amounts due to each such person thereunder.

R. S., c. 129, § 119.

**Collocation and rank. Contestation. 181.** Every such person shall be collocated and ranked as, and shall be entitled to the rights of, a creditor or claimant for such amount, without filing any claim, notice, or evidence, or taking any action: Provided that any such collocation may be contested by any person interested, and any person not collocated, or dissatisfied with the amount for which he is collocated, may file his own claim.

R. S., c. 129, § 119.

**Copy to be filed. Notice of publication. 182.** A copy of such statement, certified by the liquidator, shall, forthwith after the making of such statement, be filed in the office of the Superintendent of Insurance, at Ottawa, and notice of such filing shall be forthwith given by the liquidator by notice in the *Canada Gazette*, and in the official gazette of each Province, and in two newspapers published at or nearest to the place where the head office in Canada of the company is situate.

R. S., c. 129, § 119.

**Notice by mail. 183.** The liquidator shall also forthwith send by mail, prepaid, a notice of such filing to each creditor named in the statement, addressed to the addresses in Canada of such creditors, as far as the same are known, and, in the case of foreign creditors, addressed to the addresses of their representatives or agents in Canada, as far as the same are known.

R. S., c. 129, § 119.

**If a claim accrues after a winding-up order but within 30 days of filing of statement. Claims accruing after 30 days. 184.** The holder of a policy or contract of insurance upon which a claim accrues, after the date of the winding-up order, and before the expiration of thirty days after the filing, in the office of the Superintendent of Insurance, of the statement aforesaid, shall be entitled to claim, as a creditor, for the full net amount of such claim; and the said statement and the dividend sheet shall, if necessary, be amended accordingly: Provided that no claim which accrues after the expiration of the thirty days hereinbefore mentioned, shall rank upon the estate, unless nor until there is sufficient to pay all creditors in full.

R. S., c. 129, § 120.

**Re-insurance. 185.** Before the expiration of the thirty days aforesaid, the liquidator may, with the sanction of the Court, arrange with any incorporated insurance company, approved of for such purpose by the Superintendent of Insurance, for the re-insurance by such company of the outstanding risks of the insolvent company, and for the assumption by such company of the whole or any part of the other liabilities of the insolvent company.

R. S., c. 129, § 121.

**Payment of premium. Application of surplus. 186.** In case of such arrangement the liquidator may pay or transfer to such company, such of the assets of the insolvent company as may be agreed on as the consideration for such re-insurance or assumption, and in such case the arrangement for re-insurance shall be in lieu of the claim for unearned premium. 2. Any remaining assets of the insolvent company shall be retained by the liquidator as a security to the creditors for the payment of their claims, and shall, if necessary, be so applied, and shall not be returned to the company, except on the order of the Court after the satisfaction of such claims.

R. S., c. 129, § 121.

**Report to Superintendent of Insurance. 187.** If the company is licensed under the Insurance Act, the liquidator shall report to the Superintendent of Insurance once in every six months, or oftener, as the Superintendent requires, on the condition of the affairs of the company, with such particulars as the Superintendent requires.

R. S., c. 129, § 122.

**What publication of notice sufficient. 188.** Publication in the *Canada Gazette*, and in the official gazette of each Province, and in two newspapers published at or nearest to the place where the head office of an insurance company is situate, of notice of any proceeding of which, under this Act, creditors are to be notified, shall be sufficient notice to holders of policies or contracts of insurance, in respect of which no notice of claim has been received.

R. S., c. 129, § 123.

**b) 6 & 7 Edw. 7, c. 51. An Act to amend the Winding-up Act (27th April, 1907).**

[1. Amends R. S. 1906, c. 144, by adding a new section, § 131 A, and is there incorporated.]

[2. Amends R. S. 1906, c. 144, § 30, and is there incorporated.]

**c) 7 & 8 Edw. 7, c. 74. An Act to amend the Winding-up Act (3d April, 1908).**

[1. Amends R. S. 1906, c. 144, § 102. This is in turn repealed by 7 & 8 Edw. 7, c. 10, § 2, the provisions of which are incorporated.]

**d) 7 & 8 Edw. 7, c. 75. An Act to amend the Winding-up Act (16th June, 1908).**

[1. Amends R. S. 1906, c. 144, § 84, and is there incorporated.]

**e) 9 & 10 Edw. 7, c. 62. An Act to amend the Winding-up Act (4th May, 1910).**

[1. Amends R. S. 1906, c. 144, § 2, and is there incorporated.]

[2. Amends R. S. 1906, c. 144, § 106, and is there incorporated.]

**Secret Commissions.**

**8 & 9 Edw. 7, c. 33. An Act to prevent the Payment or Acceptance of Illicit or Secret Commissions, and other like Practices (19th May, 1909).<sup>1)</sup>**

**Short title.** 1. This Act may be cited as *The Secret Commissions Act, 1909*.  
Imp. § 4 (1).

**Definitions.** 2. In this Act, unless the context otherwise requires: a) "Consideration" includes valuable consideration of any kind; b) "Agent" means any person employed by or acting for another, and includes a person serving under the Crown or under any municipal or other corporation; c) "Principal" includes an employer.

Imp. § 1 (2).

**Penalty for an agent accepting gifts, etc., for a reward; for offering reward, etc., to an agent; for false statement given to or used by an agent; liability of party privy to offence.** 3. Everyone is guilty of an offence and liable, upon conviction on indictment, to two years' imprisonment, or to a fine not exceeding two thousand five hundred dollars, or to both, and, upon summary conviction, to imprisonment for six months, with or without hard labour, or to a fine not exceeding one hundred dollars, or to both, who: a) Being an agent, corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act relating to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person with relation to his principal's affairs or business; or b) Corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward or consideration to such agent for doing or forbearing

<sup>1)</sup> The references in the notes (Imp.) are to the *Imperial Prevention of Corruption Act, 1906*, (6 Edw. 7, c. 34).



to do, or for having after the passing of this Act done or forborne to do, any act relating to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person with relation to his principal's affairs or business; or c) Knowingly gives to any agent, or, being an agent, knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which, to his knowledge, is intended to mislead the principal; d) Every person who is a party or knowingly privy to any offence under this Act shall be guilty of such offence and shall be liable upon conviction to the punishment hereinbefore provided for by this section.

Imp. § 1 (1).

**Application of R. S., c. 146.** This Act shall be read as if its provisions formed part of *The Criminal Code*.

### Carriage of Goods.<sup>1)</sup>

#### a) R. S. C. 1906, c. 118. An Act respecting Bills of Lading.

**Short title. 1.** This Act may be cited as the *Bills of Lading Act*.

**Right of consignee or endorsee. 2.** Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned passes upon by reason of such consignment or endorsement, shall have and be vested with all such rights of action and be subject to all such liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

52 Vic. c. 30, § 1; Imp. 18 & 19 Vic. c. 111, § 1.

**Rights preserved. 3.** Nothing in this Act contained shall prejudice or effect: a) any right of stoppage in transitu; or, b) any right of an unpaid vendor under the Civil Code of Lower Canada; or, c) any right to claim freight against the original shipper or owner; or d) any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

52 Vic. c. 30, § 2; Imp. 18 & 19 Vic. c. 111, § 2.

**Evidence by bill of lading. Proviso. 4.** Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel or train, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading has actual notice, at the time of receiving the same, that the goods had not in fact been laden on board, or unless such bill of lading has a stipulation to the contrary: Provided that the master or other person so signing, may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fault of the shipper or of the holder, or of some person under whom the holder claims.

52 Vic. c. 30, § 3; Imp. 18 & 19 Vic. c. 111, § 3.

#### b) R. S. C. 1906, c. 37. An Act respecting Railways.

**Accommodation for traffic. 284. 1.** The company shall, according to its powers: a) Furnish at the place of starting, and at the junction of the railway with other railways, and at all stopping places established for such purpose, adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage upon the railway; b) Furnish adequate and suitable accommodation for the carrying, unloading, and delivering of all such traffic; c) Without delay, and with due care and diligence receive, carry, and deliver all such traffic; and, d) Furnish and use all proper appliances, accommodation, and means necessary for receiving, loading, carrying, unloading, and delivering such traffic. 2. Such adequate and suitable accommodation shall include reasonable facilities for the junction of private sidings or private branch railways with any railway belonging to or worked by the company, and reason-

<sup>1)</sup> See also the Acts of the several Provinces relating to bills of lading, reprinted *in/ra*.

able facilities or receiving, forwarding and delivering traffic upon and from those sidings or private branch railways, together with the placing of cars and moving them upon and from such private sidings and private branch railways. 3. If in any case such accommodation is not, in the opinion of the Board, furnished by the company, the Board may order the company to furnish the same within such time or during such period as the Board deems expedient, having regard to all proper interests; or may prohibit or limit the use, either generally or upon any specified railway or part thereof, of any engines, locomotives, cars, rolling stock, apparatus, machinery, or devices, or any class or kind thereof, not equipped as required by this Act, or by any orders or regulations of the Board made within its jurisdiction under the provisions of this Act. 4. Such traffic shall be taken, carried to and from, and delivered at the places aforesaid on the due payment of the toll lawfully payable therefor. 5. Where a company's railway crosses or joins or approaches in the opinion of the Board, sufficiently near to any other railway, upon which passengers or mails are transported, whether the last mentioned railway is within the legislative authority of the Parliament of Canada or not, the Board may order the company to so regulate the running of its trains carrying passengers or mails, and the places and times of stopping them, as to afford reasonable opportunity for the transfer of passengers and mails between its railway and such other railway, and may order the company to furnish reasonable facilities and accommodation for such purpose. 6. For the purposes of this section the Board may order that specific works be constructed or carried out, or that property be acquired, or that specified tolls be charged, or that cars, motive power or other equipment be allotted, distributed, used, or moved as specified by the Board, or that any specified steps, systems, or methods be taken or followed by any particular company or companies, or by railway companies generally. 7. Every person aggrieved by any neglect or refusal of the company to comply with the requirements of this section shall, subject to this Act, have an action therefor against the company, from which action the company shall not be relieved by any notice, condition, or declaration if the damage arises from any negligence or omission of the company or of its servants. 8. The Board may make regulations, applying generally or to any particular railway or any portion thereof, imposing charges for default or delay by any company in furnishing accommodation, appliances, or means as aforesaid, or in receiving, loading, carrying, unloading, or delivering traffic, and may enforce payment of such charges by companies to any person injuriously affected by such default or delay; and any amount so received by any person shall be deducted from the damages recoverable or recovered by such person for such default or delay; and the Board may, by order or regulation, determine what circumstances shall exempt any company from payment of any such charges.

Railway companies are common carriers and subject to the common law rules relating to common carriers, but this Act imposes further duties upon the railway companies. They are required under this section to furnish adequate and suitable accommodation for the carrying, unloading, and delivering of traffic. "Traffic" means the traffic of passengers, goods, and rolling stock. — § 1 (31). "Goods" includes personal property of every description that may be conveyed upon the railway or upon steam vessels or other vessels connected with the railway. — § 1 (10). The term "personal property" is wide enough to include all animals which may be the subject of ownership, but possibly does not include animals *ferae naturae*. — 3 Can. Ry. Cas. 190. But it does include dogs. — *McCormack v. Grand Trunk Railway Co.*, (1903), 6 O. L. R. 577. Railway companies being authorized to carry cattle and hogs and, as a necessary incident thereto, for the purpose of shipping the animals, to have pens for herding them, if in the proper exercise of their powers they have created a nuisance and it is not by the improper exercise of their powers that it has been created, they are not responsible for any such nuisances that may be thereby created. — *Bennett v. Grand Trunk Railway Co.*, (1901), 2 O. L. R. 425. — In discussing the nature and duties of common carriers, McDougall, Co. J., makes the following statements: "The perusal of the latest text books and authorities indicates that the law on the subject of what constitutes a common carrier or what circumstances will create the liability of a common carrier is not defined with great clearness. Perhaps a fairly general definition may be thus expressed: Any person undertaking for hire to carry the goods of all persons indifferently is to be considered a common carrier. (Beven on Negligence, 2d ed. p. 1021.) Alderson, B., in *Ingate v. Christie*, 3 C. & K. 61, states the principle as follows: 'The criterion is whether he carries for particular persons only or whether he carries for everyone. If a man holds himself out to do it for everyone who asks him he is a common carrier, but if he does not do it for everyone, but carries for you and me only, that is a matter of special contract.' And accordingly in *Ingate v. Christie* he held that where a defendant at his counting-house had displayed on the door post the word "Lighterman," and carried goods in his lighters from the wharves to the ships for anybody who employed him, he was a common carrier. He further states: 'If a person holds



himself out to carry goods for everyone as a business . . . . . he is a common carrier.' Story defines a common carrier as 'one who undertakes for hire or reward to transport the goods of such as choose to employ him from place to place.' In *Chitty on Carriers*, 1st ed. p. 53, the learned writer, adopting the language of Story in his work on Bailments, thus defines a common carrier: 'A common carrier is one who, by ancient law, held, as it were, a public office, and was bound to the public. To render a person liable as a common carrier he must exercise the business of carrying as a public employment, and must undertake to carry goods of persons indiscriminately and hold himself out as ready to engage in the transportation of goods for hire as a business and not as a casual occupation, *pro hac vice*.' Brett, J., in *Nugent v. Smith*, in his judgment in the Court below, 1 C. P. D. p. 27, thus expresses his view as to what the test should be as to when a man is a common carrier: 'The real test of whether a man is a common carrier, whether by land or water, therefore really is whether he has held out that he will, so long as he has room, carry for hire the goods of every person who will bring goods to him to be carried. And the test is not whether he is carrying as a public employment or whether he carries to a fixed place, but whether he holds out either expressly or by a course of conduct that he will carry for hire, so long as he has room, the goods of all persons indifferently who send him goods to be carried. If he does this his first responsibility naturally is that he is bound by a promise implied by law to receive and carry for a reasonable price the goods sent him upon such an invitation.' In *The Liver Alkali Company v. Johnson*, L. R. 7 Exch. 267, and on appeal, L. R. 9 Exch. 338, it was held that a barge owner who let out his vessels for the conveyance of any goods to any customer who applied, and who did not ply between particular places, was a common carrier. In this case the place from which and to which the goods were to be carried were fixed by the customer. Blackburn, J., in his judgment, expressed the opinion that 'the defendant was a common carrier, and it was not necessary to inquire whether the defendant, as a carrier, was liable to an action for not taking goods tendered to him.' — *Culver v. Lester*, (1901), 37 C. L. J. 421. Where the packing is insufficient, or the goods are wrongly described, the carrier may be exempt from liability. — *Connelly v. Great Northern Railway Co.*, (1892), 15 Leg. News, 365. A carrier may be responsible for unreasonable delays in transportation, resulting in damage to the goods. — *Delorne v. Canadian Pacific Railway Co.*, (1888), 11 Leg. News, 106. The carrier is bound to deliver the whole of the goods received, but is not responsible for any diminution in weight or quantity, or any deterioration due to the nature of the goods carried. — *Seymour v. Sincennes*, (1869), 1 Rev. Leg. 716. The Criminal Code provides that: No railway company within Canada whose railway forms any part of a line of road over which cattle are conveyed from one Province to another Province, or from the United States to or through any Province, or from any part of a Province to another part of the same, and no owner or master of any vessel carrying or transporting cattle from one Province to another Province, or within any Province, or from the United States to or through any Province, shall confine the same in any car, or vessel of any description, for a longer period than twenty-eight hours without unloading the same for rest, water, and feeding for a period of at least five consecutive hours, unless prevented from so unloading and furnishing water and food by storm or other unavoidable cause, or by necessary delay or detention in the crossing of trains. In reckoning the period of confinement, the time during which the cattle have been confined without such rest, and without the furnishing of food and water, on any connecting railway or vessels from which they are received, whether in the United States or in Canada, shall be included. — R. S. C., (1906), c. 146, § 544. Contracts for the carriage of animals ordinarily provide for an exemption or limitation of the liability of the carrier for loss of or damage to the animals. The validity of these stipulations must be considered in the light of the provisions of § 340, *infra*. It seems that the Board has power to approve contracts limiting the liability of the carrier in such cases. — *Mercer v. Canadian Pacific Railway Co.*, (1908), 17 O. L. R. 585; *Southerland v. Grand Trunk Railway Co.*, (1909), 18 O. L. R. 139. Where animals are in charge of the owner or his agent and the damage is due to the negligence of such owner or agent the carrier is not liable. — *Farr v. Great Western Railway Co.*, (1874), 35 U. C. Q. B. 534; see further as to the liability for carriage of animals: *Costello v. Grand Trunk Railway Co.*, (1906), 7 O. W. R. 846; *Bicknell v. Grand Trunk Railway Co.*, (1899), 26 O. A. R. 431. Where the carrier receives goods destined to a point beyond the line of such carrier, and such carrier acts as agent for the connecting carriers, the latter are bound on the ordinary principles of agency. Where, however, no agency can be predicated, the consignor may fail to recover from a connecting carrier upon whose lines the goods were lost or damaged because of want of privity between him and the defendant carrier. — *Crawford v. Great Western Railway Co.*, (1868), 18 U. C. C. P. 510; *Richardson v. Canadian Pacific Railway Co.*, (1889), 19 O. R. 369. It seems that a railway company may stipulate that its liability as carrier or otherwise shall cease upon a delivery of the goods to a connecting carrier. — *Grand Trunk Railway Co. v. McMillan*, (1888), 16 S. C. R. 543. The bills of lading ordinarily stipulate that the liability of the receiving carrier shall terminate under these circumstances. The effect of such a provision is to make the receiving carrier an agent of the consignor for delivery of the goods to the connecting carrier. — *Lake Erie & Detroit River Railway Co. v. Sales*, (1896), 26 S. C. R. 663. A company receiving goods for carriage to a point beyond its line *prima facie* contracts for the entire carriage, but it may limit its responsibility to acts or defaults occurring upon its own lines, and where this is done every and each carrier in succession comes under an obligation to deliver goods so received to the next carrier. — *Northern Pacific Railway Co. v. Grant*, (1895), 24 S. C. R. 546. The liability of carriers, *qua* carriers, terminates upon

the arrival of the goods carried at their destination and the expiration of a reasonable time afterwards for their delivery. What is a reasonable time must be determined with a due regard to surrounding circumstances. — *Grand Trunk Railway Co. v. McMillan*, (1889), 16 S. C. R. 546. The carrier when acting as warehouseman is liable only if the goods are lost or damaged by his negligence. — *Milloy v. Grand Trunk Railway Co.*, (1893), 23 O. R. 454; 21 O. A. R. 404; *Lake Erie & Detroit Railway Co. v. Sales*, (1896), 26 S. C. R. 663. Where notice of arrival of the goods has been given to the consignee and he has been given a reasonable time to remove the same the liability of the carrier becomes that of a warehouseman. — *Richardson v. Canadian Pacific Railway Co.*, (1889), 19 O. R. 369. The same rule applies where a consignee has knowledge of the arrival of the goods. — *Masson v. Merchants Bank*, (1898), Q. R. 14 S. C. 293. Or where the contract of carriage has not begun or been completed through some fault of the consignor or the consignee. — *Milloy v. Grand Trunk Railway Co.*, (1893), 23 O. R. 454; 21 O. A. R. 404. *Semble*, the carrier is not bound to send notice of arrival of goods to the consignee. The consignee must make inquiry in regard to goods expected to arrive. — *Masson v. Merchants Bank*, (1898), Q. R. 14 S. C. 293; see also *Richardson v. Canadian Pacific Railway Co.*, (1889), 19 O. R. 369; *Montreal Navigation Co. v. L'Ecuyer*, (1901), 21 C. L. T. 249.

**Contracts, etc., impairing carriers' liability. 340.** 1. No contract, condition, by-law, regulation, declaration, or notice made or given by the company, impairing, restricting, or limiting its liability in respect of the carriage of any traffic, shall, except as hereinafter provided, relieve the company from such liability, unless such class of contract, condition, by-law, regulation, declaration, or notice shall have been first authorized or approved by order or regulation of the Board. 2. The Board may, in any case, or by regulation, determine the extent to which the liability of the company may be so impaired, restricted, or limited. 3. The Board may by regulation prescribe the terms and conditions under which any traffic may be carried by the company.

At common law a carrier may stipulate against liability even for negligence. — *Dixon v. Richelieu and Ontario, etc., Co.*, (1888), 15 O. A. R. 647; 18 S. C. R. 704; *Glengoil Steamship Co. v. Pilkington*, (1898), 28 S. C. R. 146; *Dodson v. Grand Trunk Railway Co.*, (1871), 8 N. S. 405. Under the Railway Act the right of a carrier to limit his liability is more restricted. *McMurchy and Denison* thus summarize the present law under sections 284 and 340 of the Canadian Railway Act: The carrier may place the burden of proof of negligence upon the shipper and may limit his responsibility to his own line without assuming responsibility of loss by a connecting carrier. He may furthermore limit the amount of damages recoverable in case a loss happens through negligence provided such agreement be made before shipment. Agreements providing that notice of loss or damage must be given within a prescribed time are valid. — *Railway Law of Canada*, 2d edition, pp. 472—474.

## c) R. S. C. 1906, c. 113. An Act respecting Shipping in Canada.

### Part XVII. Liabilities of Carriers by Water.

#### Interpretation.

**Definitions. 961.** In this part, unless the contract otherwise requires: a) "goods" means and includes goods, wares, merchandise, and articles of any kind whatsoever; b) "valuable securities" includes every document forming the title or evidence of the title to any property of any kind whatsoever.

R. S., c. 82, § 1. This part of *The Canada Shipping Act* is not referred to in *The Water-Carriage of Goods Act*, either by a repealing clause, or otherwise. Consequently the former Act is affected by the later one only in so far as it is inconsistent with and repugnant to any of the provisions of the latter. The Acts must be read together. In the event of inconsistency, the new Act governs. — *Davidson, The Water-Carriage of Goods Act*, in *Canada Law Journal*, Vol. 46, p. 553, 555.

#### Responsibility of Carriers.

**Must convey passengers and goods. 962.** Carriers by water shall, at the times and in the manner and on the terms of which they have respectively given public notice, receive and convey according to such notice all persons applying for passage, and all goods offered for conveyance, unless, in either case there is reasonable and sufficient cause for not doing so.

R. S., c. 82, § 2.

**Responsibility for goods. 963.** Carriers by water shall be responsible not only for goods received on board their vessels, but also for goods delivered to them for conveyance by any such vessel, and they shall be bound to use due care and diligence in the safe-keeping and punctual conveyance of such goods, subject to the provisions hereinafter made.

R. S., c. 82, § 2.



**Loss or damage, liability for. 964.** Carriers by water shall be liable for the loss of or damage to goods entrusted to them, for conveyance except that they shall not be liable when such loss or damage happens: a) Without their actual fault or priority, or without the fault or neglect of their agents, servants or employees; or, b) by reason of fire or the dangers of navigation; or, c) from any defect in or from the nature of the goods themselves; or, d) from armed robbery or other irresistible force.

R. S., c. 82, § 2.

**Responsibility as to gold and silver. 965.** Carriers by water shall not be liable for any total or partial loss of gold or silver, diamonds, watches, jewels, or precious stones, money, or valuable securities or articles of great value not being ordinary merchandise, by reason of any robbery, theft, removal, or secreting thereof, unless the true nature and value thereof has, at the time of delivery for conveyance, been declared by the owner or shipper thereof to the carrier or his agent or servant, and entered in the bill of lading or otherwise in writing.

R. S., c. 82, § 2.

**Personal baggage of passengers. 966.** Carriers by water shall be liable for the loss of or damage to the personal baggage of passengers by their vessels: Provided that such liability shall not extend to any greater amount than five hundred dollars, or to the loss of or damage to any such valuable articles as are mentioned in the last preceding section, unless the true nature and value of such articles so lost or damaged have been declared and entered, as provided by the said section.

R. S., c. 82, § 3.

## d) 9 & 10 Edw. 7 c. 61. An Act respecting the Water-Carriage of Goods Act (4th May, 1910).<sup>1)</sup>

**Short title. 1.** This Act may be cited as the *Water-Carriage of Goods Act*.

**Interpretation. 2.** [As amended by 2 Geo. 5, c. 27, § 1.] In this Act, unless the context otherwise requires: a) "Goods" includes goods, wares, merchandise, and articles of any kind whatsoever, except live animals and lumber, deals, and other articles usually described as "wood-goods;" b) "Ship" includes every description of vessel used in navigation not propelled by oars; c) "Port" means a place where ships may discharge or load cargo.

**Application of Act. 3.** This Act applies to ships carrying goods from any port in Canada to any other port in Canada, or from any port in Canada to any port outside of Canada, and to goods carried by such ships, or received to be carried by such ships.

**Certain clauses prohibited in bill of lading. 4.** Where any bill of lading or similar document of title to goods contains any clause, covenant, or agreement whereby: a) The owner, charterer, master, or agent of any ship, or the ship itself, is relieved from liability for loss or damage to goods arising from negligence, fault, or failure in the proper loading, stowage, custody, care, or delivery of goods received by them or any of them to be carried in or by the ship; or b) any obligations of the owner or charterer of any ship to exercise due diligence to properly man, equip, and supply the ship, and make and keep the ship seaworthy, and make and keep the ship's hold, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation, are in any wise lessened, weakened, or avoided; or c) the obligations of the master, officers, agents, or servants of any ship to carefully handle and stow goods, and to care for, preserve, and property deliver them, are in any wise lessened, weakened, or avoided; such clause, covenant, or agreement shall be illegal, null, and void, and of no effect, unless such clause, covenant, or agreement is in accordance with other provisions of this Act.

**Express reference to be made to this act. Jurisdiction. 5.** Every bill of lading, or similar document of title to goods, relating to the carriage of goods from any place in Canada to any place outside of Canada shall contain a clause to the effect that the shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in this Act; and any stipulation or agreement purporting to oust or lessen the jurisdiction of any court having jurisdiction at the port of loading in Canada in respect of the bill of lading or document, shall be illegal, null and void, and of no effect.

<sup>1)</sup> As amended by 2 Geo. 5, c. 27.

**Limitation of owner's liability. 6.** If the owner of any ship transporting merchandise or property from any port in Canada exercises due diligence to make this ship in all respects seaworthy and properly manned, equipped, and supplied, neither the ship nor the owner, agent, or charterer shall become or be held responsible for loss or damage resulting from faults or errors in navigation or in the management of the ship, or from latent defect.

**Loss for which the ship, the owner, etc., is not liable. 7.** The ship, the owner, charterer, agent, or master shall not be held liable for loss arising from fire, dangers of the sea or other navigable waters, acts of God, or public enemies, or inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service, or other reasonable deviation, or from strikes, or for loss arising without their actual fault or privity or without the fault or neglect of their agents, servants, or employees.

**Limit of liability as to value of goods. Effect of declaration. 8.** The ship, the owner, charterer, master, or agent shall not be liable for loss or damage to or in connection with goods for a greater amount than one hundred dollars per package, unless a higher value is stated in the bill of lading or other shipping document, nor for any loss or damage whatever if the nature or value of such goods has been made falsely stated by the shipper, unless such false statement has been made by inadvertence or error. The declaration by the shipper as to the nature and value of the goods shall not be considered as binding or conclusive on the ship, her owner, charterer, master, or agent.

**Bill of lading to be issued to shipper. Contents. Effect as evidence. 9.** Every owner, charterer, master, or agent of any ship carrying goods, shall on demand issue to the shipper of such goods a bill of lading shewing, among other things, the marks necessary for identification as furnished in writing by the shipper, the number of packages or pieces, or the quantity or the weight, as the case may be, and the apparent order and condition of the goods as delivered to or received by such owner, charterer, master, or agent; and such bill of lading shall be prima facie evidence of the receipt of the goods as therein described.

[10. Is repealed.]

**Notice of arrival of ship. 11.** When a ship arrives at a port where goods carried by the ship are to be delivered, the owner, charterer, master, or agent of the ship shall forthwith give such notice as is customary at the port, to the consignees of goods to be delivered there, that the ship has arrived.

**Offences. Making illegal or defective bills of lading. Refusal to issue. Refusal to give notice. Penalty. Disposal of Penalty. 12.** Every one who, being the owner, charterer, master, or agent of a ship: a) Inserts in any bill of lading or similar document of title to goods any clause, covenant, or agreement declared by this Act to be illegal; or makes signs, or executes any bill of lading or similar document of title to goods containing any clause, covenant, or agreement declared by this Act to be illegal; without incorporating verbatim, in conspicuous type, in the same bill of lading, or similar document of title to goods, section 4 of this Act; or, b) Refuses to issue to a shipper of goods a bill of lading as provided by this Act; or c) Refuses or neglects to give the notice of arrival of the ship required by this Act; is liable to a fine not exceeding one thousand dollars, with cost of prosecution; and the ship may be libelled therefor in any Admiralty District in Canada within which the ship is found. 2. Such proportion of any penalty imposed under this section as the Court deems proper, together with full costs, shall be paid to the person injured, and the balance shall belong to His Majesty for the public uses of Canada.

**Shipping inflammable explosives or dangerous goods. Penalty. 13.** Every one who knowingly ships goods of an inflammable or explosive nature, or of a dangerous nature, without before shipping the goods making full disclosure in writing of their nature to, and obtaining the permission in writing of, the agent, master, or person in charge of the ship, is liable to a fine of one thousand dollars.

**Master may destroy such goods, if shipped without disclosure. Shipper liable for damages. 14.** Goods of an inflammable or explosive nature, or of a dangerous nature, shipped without such permission from the agent, master, or person in charge of the ship, may, at any time before delivery, be destroyed or rendered innocuous, by the master or person in charge of the ship, without compensation to the owner, ship-



per, or consignee of the goods; and the person so shipping the goods shall be liable for all damages directly or indirectly arising out of such shipment.

**Act not retroactive. 15.** This Act shall not apply to any bill of lading or similar document of title to goods made pursuant to a contract entered into before this Act comes into force.

**Commencement of Act. 16.** This Act shall come into force on the first day of September, one thousand nine hundred and ten.

### e) 1 & 2 Geo. 5, c. 27. An Act to amend the Water-Carriage of Goods Act (19th May, 1911).

[1. Amends 9 & 10 Edw. 7, c. 61, § 2, and is there incorporated.]

[2. Repeals 9 & 10 Edw. 7, c. 61, § 10.]

### Bills of Exchange.<sup>1)</sup>

#### a) R. S. C. 1906, c. 119. An Act relating to Bills of Exchange, Cheques, and Promissory Notes.<sup>2)</sup>

##### *Short title.*

**Short title. 1.** This Act may be cited as the *Bills of Exchange Act*.

**Imp. § 1. History.** — This Act, Chapter 119 of the Revised Statutes of Canada, 1906, is a revision and consolidation of the *Bills of Exchange Act, 1890* (53 Vic. c. 33) and the several amendments thereto. In the revision the law is subjected to a different scheme of division into sections and subsections and to a different arrangement and numbering of sections. Many verbal differences consequently exist between the revised Act and the *Bills of Exchange Act, 1890*. The *Bills of Exchange Act, 1890*, was for the most part a copy of the imperial *Bills of Exchange Act, 1882* (45 & 46 Vic. c. 61).

**Commencement.** — The *Bills of Exchange Act, 1890*, took effect 1st September, 1890, and, although not retrospective, governed, so far as it applied, juristic acts affecting bills of exchange, cheques, and promissory notes, done after that date, whether or not the instruments were in existence before the Act took effect. — MacLaren, *Bills, notes, and cheques*, p. 19. The revised Act took effect 31st January, 1907; and by the *Revised Statutes of Canada, 1906, Act, § 7*, "If upon any point the provisions of the said Revised Statutes are not in effect the same as those of the repealed Acts and parts of Acts for which they are substituted, then, as respects all transactions, matters, and things subsequent to the time when the said Revised Statutes take effect, the provisions contained in them shall prevail, but, as respects all transactions, matters, and things anterior to the said time, the provisions of the said repealed Acts and parts of Acts shall prevail."

**Interpretation.** — After referring to the view that the Imperial *Bills of Exchange Act, 1882*, is generally to be construed as a declaratory statute, Mr. Justice MacLaren says: "As the law in the various Provinces of Canada before 1890 varied considerably, as shewn in the foregoing pages, and as the Act of that year in a number of instances changed the law to make it harmonize with that of England, it cannot be so generally accepted as declaratory of the old law in Canada. Nevertheless, there has been a disposition on the part of the Courts to consider it as declaratory, where it is not clear that the law was actually changed. It is intended to declare the law upon the subject of bills of exchange, cheques, and notes; and where it is laid down clearly and without ambiguity, it is to be followed without any enquiry as to the previous state of the law. In cases of doubt, ambiguity, or obscurity, the old cases may often be usefully examined and considered." — MacLaren, *Bills, notes, and cheques*, pp. 19—20. See also *Bank of Montreal v. The King*, (1906), 38 S. C. R. 258, 263, 264; *Northern Crown Bank v. International Electric Co.*, (1911), 19 O. W. R. 392.

##### *Interpretation.*

**Definitions. 2.** In this Act, unless the context otherwise requires: a) "acceptance" means an acceptance completed by delivery or notification; b) "action" includes counter-claim and set off; c) "bank" means an incorporated bank or savings bank carrying on business in Canada; d) "bearer" means the person in possession of a bill or note which is payable to bearer; e) "bill" means bill of exchange, and "note" means promissory note; f) "delivery" means transfer of possession, actual

<sup>1)</sup> The annotations to this Act are by Wm. Underhill Moore, Professor of Law in the University of Wisconsin (Madison). — <sup>2)</sup> The references (Imp.) in the notes are to the Imperial *Bills of Exchange Act, 1882*, (45 & 46 Vic. c. 61).

or constructive, from one person to another; g) "holder" means the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof; h) "endorsement" means an endorsement completed by delivery; i) "issue" means the first delivery of a bill or note, complete in form, to a person who takes it as a holder; j) "value" means valuable consideration; k) "defence" includes counter-claim; l) "non-business days" means days directed by this Act to be observed as legal holidays or non-judicial days. 2. Any day other than as aforesaid is a business day.

Imp. §§ 2, 92.

### Part I. General.

**Thing done in good faith.** 3. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly whether it is done negligently or not.

Imp. § 90.

**Signature.** 4. Where by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

Imp. § 91.

**What required of corporation.** 5. In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing is duly sealed with the corporate seal; but nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

Imp. § 91.

**Computation of time.** 6. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

Imp. § 92.

**Crossing dividend warrants.** 7. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

Imp. § 95.

**The Bank Act not affected.** 8. Nothing in this Act shall affect the provisions of the *Bank Act*.

**Imperial Acts 15 Geo. 3, c. 51 and 17 Geo. 3, c. 30.** 9. The Act of the Parliament of Great Britain passed in the fifteenth year of the reign of His late Majesty George III., intituled *An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, and the Act of the said Parliament passed in the seventeenth year of His said Majesty's reign, intituled *An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, shall not extend to or be in force in any Province of Canada, nor shall the said Acts make void any bills, notes, drafts, or orders made or uttered therein.

**Common law of England.** 10. The rules of the common law of England, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall apply to bills of exchange, promissory notes, and cheques.

Imp. § 97. This section in effect unifies the law of the Dominion by making the common law of England in respect of bills, notes, and cheques, when not inconsistent with the express provisions of the Act, applicable in all the Provinces, including Quebec. Thus, in that Province the obligation of the makers of a note, in the absence of a special stipulation, was held in accordance with the English common law rule, to be joint and not joint and several. — *Noble v. Forgrave*, (1899), Q. R. 17 S. C. 234. *Semble*, that in determining what the English common law is reference should be made to English cases rather than to Canadian cases not decided under this section. — *Macdonald v. Whitefield*, (1883) 8 A. C. 733, 749. But "reference must still be had, however, in many instances, to Provincial law in matters connected with bills of exchange, etc. The Act governs the form, issue, negotiation, and discharge of bills, the manner in which persons become liable, as parties thereto, etc., but neither the Act itself, nor the common law of England made applicable by sec. 10, regulates all matters of civil obligation resulting from the substance of the contracts entered into by parties to bills or determines all the consequences of such contracts. These, as a general rule, are governed by Provincial law. For instance, the Act declares what persons are liable as indorsers, but the appropriate Provincial law decides whether an indorser, as being in the nature of a surety, is discharged by dealings between the creditor and the principal debtor. (*Guy v. Paré*, 1892, Q. R. 1 S. C. 443, a case decided under Article 2340 of the Civil Code, referred to above.) Again the Act and the common law declare whether a note in a particular form is a joint note or a joint and several note (*Noble v. Forgrave*, 1899, Q. R. 17 S. C. 234), but the Provincial law regulates the consequences of joint, or joint



and several liability. Thus, where the common law rule as to joint contracts has been altered by Provincial statute, the statute governs. (*Cook v. Dodds*, 1903, 6 O. L. R. 608.) Likewise, the Act contains provisions as to the discharge of a bill by payment, or the avoiding of a bill by reason of fraud, duress, illegality of consideration, etc. What is payment, fraud, duress, or illegality must be determined by Provincial law. The Act provides only as to the extent to which fraud, etc., will affect parties other than the immediate parties to the frauds, etc. The question of capacity is expressly referred by the Act to the general law governing capacity. No less certainly questions of limitations or prescription, set-off or compensation, and evidence are to be governed by Provincial law." — Falconbridge, *Banking and bills of exchange*, p. 357.

**Protest prima facie evidence. 11.** A protest of any bill or note within Canada, and any copy thereof as copied by the notary or justice of the peace, shall, in any action be prima facie evidence of presentation and dishonour, and also of service of notice of such presentation and dishonour as stated in such protest or copy.

See note to § 12.

**Copy of protest, prima facie evidence. 12.** If a bill or note, presented for acceptance, or payable out of Canada, is protested for non-acceptance or non-payment a notarial copy of the protest and of the notice of dishonour, and a notarial certificate of the service of such notice, shall be received in all Courts, as prima facie evidence of such protest, notice, and service.

In the absence of statutes similar to sections 11 and 12, the protest of an inland bill or a note would be futile and the certificate thereof of no evidentiary effect. — *Codd v. Lewis*, (1851), 8 U. C. Q. B. 242, 243. So also a foreign certificate of protest would be evidence of a notarial presentment, demand, and protest only, and not of the giving of notice even though that were recited. — *Ewing v. Cameron*, (1842), 6 U. C. Q. B. O. S. 541. For cases construing and applying similar statutes (Civil Code, Art. 2305; C. S. C. c. 57, § 6; R. S. O. c. 73, §§ 34, 35) in force before the adoption of these sections, see: *Ross v. McKindsay*, (1845), 1 U. C. Q. B. 507; *Codd v. Lewis*, *supra*; *Griffin v. Judson*, (1862), 12 U. C. C. P. 430; *Southam v. Ranton*, (1883), 9 O. A. R. 530; *Ontario Bank v. Burke*, (1885), 10 O. P. R. 561.

**Officer of bank not to act as notary. 13.** No clerk, teller, or agent of any bank shall act as a notary in the protesting of any bill or note payable at the bank or at any of the branches of the bank in which he is employed.

*Cp. Pelletier v. Brosseau*, (1890), M. L. R. 6 S. C. 331.

**Consideration, purchase money of patent. Absence of necessary words. 14.** Every bill or note the consideration of which consists, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, shall have written or printed prominently and legibly across the face thereof, before the same is issued, the words "Given for a patent right." 2. Without such words thereon, such instrument and any renewal thereof shall be void, except in the hands of a holder in due course without notice of such consideration.

See note to § 16.

**Transferee to take with equities. 15.** The endorsee or other transferee of any such instrument having the words aforesaid so printed or written thereon, shall take the same subject to any defence or set-off in respect of the whole or any part thereof which would have existed between the original parties.

See note to § 16.

**Transferring defective note an indictable offence. Penalty. 16.** Every one who issues, sells, or transfers, by endorsement or delivery, any such instrument not having the words "Given for a patent right" printed or written in manner aforesaid across the face thereof, knowing the consideration of such instrument to have consisted, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, is guilty of an indictable offence and liable to imprisonment for any term not exceeding one year, or to such fine, not exceeding two hundred dollars, as the Court thinks fit.

§§ 14, 15, and 16, with the exception of subsection 2 of § 14, are taken from 47 Vic. c. 38. Subsection 2, § 14, was added, when the sections were incorporated into the *Bills of Exchange Act*, 1890, as § 30. Prior to the adoption of subsection 2 it was held that a note issued in violation of the statute was not void as between the maker and payee. — *Girvin v. Burke*, (1890), 19 O. R. 204. It is now clear, that the payee of such a note, unless a holder in due course, may not recover. — *Craig v. Samuel*, (1894), 24 S. C. R. 278. Nor can an indorser with notice of the consideration. — *Johnson v. Martin*, (1892), 19 O. A. R. 592; *Davey v. Sadler*, (1901), 1 O. L. R. 626. As to what is sufficient notice to exclude a holder from the position of a holder in due course, see *Banque d'Hochelaga v. Menier*, (1896), 3 Rev. de Jur. 86. The fact that the patent right which was the consideration moved from a third person, and not from the payee, does not entitle the latter to enforce the note. — *Craig v. Samuel*, *supra*.

*Part II. Bills of Exchange.**Form of bill and interpretation.***Bill of exchange defined. Non-compliance with requisites. Unconditional order.**

**17.** A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer. 2. An instrument which does not comply with the requisites aforesaid, or which orders any act to be done in addition to the payment of money, is not, except as hereinafter provided, a bill of exchange. 3. An order to pay out of a particular fund is not unconditional within the meaning of this section: Provided that an unqualified order to pay, coupled with: a) An indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount; or, b) A statement of the transaction which gives rise to the bill, is unconditional.

*Inp. §3. Writing and signing.* — Writing "includes words printed, painted, engraved, lithographed, or otherwise traced or copied". — *Interpretation Act*, R. S. C., 1906, c. 1, § 34 (31). The signature to a bill or note may be by mark. — *Noad v. Chateauvert*, (1846) 1 Rev. de Leg. 229; *Paterson v. Pain*, (1851), 1 L. C. R. 219; *Thurber v. Desève*, (1854), Mont. Cond. Rep. 125; *Anderson v. Park*, (1855), 6 L. C. R. 479; *Collins v. Bradshaw*, (1860), 10 L. C. R. 366; *Coupal v. Coupal*, (1873), 5 Rev. Leg. 465; *Remillard v. Moisan*, (1899), Q. R. 15 S. C. 622. Evidence of a parol contemporaneous agreement purporting to vary the obligation of the acceptor, drawer, maker, or indorser of a bill of exchange or promissory note is not admissible. — *Bradbury v. Oliver*, (1839), 5 U. C. Q. B. (O. S.) 703; *Hart v. Davy*, (1843), 1 U. C. Q. B. 218; *Harvey v. Geary*, (1845), 1 U. C. Q. B. 483; *Durand v. Stevenson*, (1848), 5 U. C. Q. B. 336. *Ewart v. Weller*, (1849), 5 U. C. Q. B. 610; *Hayes v. Davis*, (1849), 6 U. C. Q. B. 396; *Adams v. Thomas*, (1850), 7 U. C. Q. B. 249; *Davis v. McSherry*, (1850), 7 U. C. Q. B. 490; *McQueen v. McQueen*, (1852), 9 U. C. Q. B. 536. *Reed v. Reed*, (1853), 11 U. C. Q. B. 26; *Hall v. Francis*, (1854), 4 U. C. C. P. 210; *Bank of Upper Canada v. Jones*, (1854), 1 O. P. R. 185; *Hammond v. Small*, (1858), 16 U. C. Q. B. 371; *Armour v. Gates*, (1859), 8 U. C. C. P. 548; *Vidal v. Ford* (1859), 19 U. C. Q. B. 88; *Street v. Beckwith*, (1860), 20 U. C. Q. B. 9; *Chamberlain v. Ball*, (1860), (1860), 5 L. C. Jur. 88; *Moore v. Sullivan*, (1862), 21 U. C. Q. B. 445; *Harper v. Paterson*, (1864), 14 U. C. C. P. 538; *Inglis v. Allen*, (1867), 7 N. S. 101; *Royal Canadian Bank v. Minaker*, (1869), 19 U. C. C. P. 219; *Stultzman v. Yeagley*, (1872), 32 U. C. Q. B. 630; *Graham v. Graham*, (1877), 11 N. S. 265; *Taylor v. McFarlane*, (1878), 12 N. S. 190.; *Scott v. Quebec Bank*, (1884), 7 Leg. News, 343; *Porteous v. Muir*, (1885), 8 O. R. 127; *Imperial Bank v. Brydon*, (1885), 2 Man. 117; *Moore v. Grosvenor*, (1890), 30 N. B. 221; *Letellier v. Cantin*, (1896), Q. R. 11 S. C. 64; *Smith v. Squires*, (1901), 13 Man. 360; *Conley v. Ashley*, (1902), 1 O. W. R. 704; *Emerson v. Erwin*, (1903), 10 B. C. 101; *McNeil v. Cullen*, (1904), 37 N. S. 13; *Dombroski v. Lalibert*, (1905), Q. R. 27 S. C. 57; *Murphy v. Bryden*, (1906), 7 O. W. R. 250.

*Unconditional order.* — An order is an imperative direction but couching it in words of politeness does not deprive it of its imperative character. — *Regina v. Tuke*, (1858), 17 U. C. Q. B. 296. See *McLean v. Ross*, (1816), 3 Rev. de Leg. 434. As to what orders are conditional see note to § 18, *infra*.

*From one person to another.* — An instrument in the form of a bill, except that there is no designation of a drawee, is not a bill. — *Forward v. Thompson*, (1854), 12 U. C. Q. B. 103; *McPherson v. Johnston*, (1894), 3 B. C. 465. As to instruments in the form of bills addressed to the drawer, or to a "fictitious" person, see § 26.

*Sum certain.* — An order to pay "the amount of my account furnished" is not for the payment of a sum certain. — *Kennedy v. Adams*, (1874), 15 N. B. 162.

*Money.* — An order or promise to pay a stated sum in services by giving a mortgage, or in lumber, is not a bill or note. — *Down v. McNamara*, (1846), 3 U. C. Q. B. 276; *Newhorn v. Lawrence*, (1848), 5 U. C. Q. B. 359; *Boulton v. Jones*, (1860), 19 U. C. Q. B. 517. Nor is a promise to pay a stated sum "in cash or mortgage." — *Going v. Barwick*, (1857), 16 U. C. Q. B. 45. See also, *Cochrane v. Caie*, (1875), 16 N. B. 224. But if the option to demand money or the alternative were in the holder, such an instrument would be a note. — *McDonell v. Holgate*, (1818), 2 Rev. de Leg. 29. Money is legal tender and whatever else is in fact current as money. — *Third National Bank v. Cosby*, (1877), 41 U. C. Q. B. 402, 408, 409; *North-Western National Bank v. Jarvis*, (1883), 2 Man. 53. *Contra*, *Gray v. Worden*, (1870), 29 U. C. Q. B. 535. See also, *Joseph v. Turcotte*, (1871), 2 Rev. Crit. 479. "Currency" and "current funds" mean *prima facie* money. — *Greenwood v. Foley*, (1872), 22 U. C. C. P. 352; *Third National Bank v. Cosby*, *supra*; *S. C.*, (1878), 43 U. C. Q. B. 58; *Dunn v. Allen*, (1884), 24 N. B. 1; *Wallace v. Souther*, (1888), 16 S. C. R. 717. A bill or note drawn in the Dominion payable in a foreign country in the currency of that country is valid. — *Greenwood v. Foley*, *supra*; *Third National Bank v. Cosby*, *supra*; *Wallace v. Souther*, *supra*. A bill or note drawn in the Dominion payable there in foreign currency is valid. — *St. Stephen's Branch Ry. & Co. v. Black*, (1870), 13 N. B. 139. *Contra*, *Bettis v. Weller*, (1870), 30 U. C. Q. B. 23; but see *Third National Bank v. Cosby*, (1878),



43 U. C. Q. B. 58, 69, where the Court, although dealing with dissimilar facts, purported to overrule *Bettis v. Weller*.

*Act in addition to the payment of money.* — An order or promise to pay a stated sum "half in cash and half in goods" is not a bill or note. — *Melville v. Beddell*, (1832), *Stevens' N. B. Digest*, 95; *Burnham v. Watts*, (1844), 4 N. B. 377; *Gillin v. Cutler*, (1857), 1 L. C. R. 277. Nor is a promise to pay a stated sum and "further to give a mortgage." — *Coté v. Lemieux*, (1859), 9 L. C. R. 221. But a stipulation added to a note, that the amount "when paid is to be indorsed on the mortgage bearing even date," does not invalidate it. — *Chesney v. St. John*, (1879), 4 O. A. R. 150.

*Particular fund.* — An order by A. to B. to pay C. a stated sum "out of Scovill's money" is conditional upon the existence of the fund indicated and is not a bill. — *Ockerman v. Blacklock*, (1862), 12 U. C. C. P. 362. So an order to pay "on account of plaintiffs' claim in this suit" is not a bill. — *Corporation of Perth v. McGregor*, (1862), 21 U. C. Q. B. 459. Nor is an order to pay "out of the first moneys received by you on my account." — *Fullerton v. Chapman*, (1871), 8 N. S. 470. Nor is an order to pay \$ 306 "out of certificate of money due me on the 1st of June, for material furnished to above church." — *Bank v. Gibson*, (1892), 21 O. R. 613. Nor is an order to pay "\$600 out of money due me by your company." — *Ward v. Ins. Co.*, (1892), Q. R. 2 S. C. 229. Nor is an order to pay \$6 a month "out of my salary during such time as I am indebted to said A." — *Angers v. Dillon*, (1898), Q. R. 15 S. C. 435. See also *Brett v. Levett*, (1871), 8 N. S. 472.

*Statement of transaction.* — A memorandum on a note that is was given for insurance premium does not destroy its negotiable character. — *Wood v. Shaw*, (1858), 3 L. C. Jur. 169. Similarly, the following instrument is a valid bill: "Mrs. J. P. — Please pay W. H. & Son the sum of \$ 138.40 for flooring supplied to your buildings on Dover Court Road, and charge same to me. (Sgd.) E." — *Hall v. Prittie*, (1890), 17 O. A. R. 306. But the negotiability of a note is destroyed by the addition of a statement that the chattel for which the note is given is to remain the property of the vendor (payee) until the note is paid. — *Dominion Bank v. Wiggins*, (1894), 21 O. A. R. 275; *Imperial Bank v. Bromish*, (1895), 16 C. L. T. 21; *Prescott v. Garland*, (1897), 34 N. B. 291; *Bank v. Gillies*, (1899), 12 Man. 495; *Keddy v. Morden*, (1905), 42 C. L. J. 124; *New Hamburg Co. v. Weisbrod*, (1906), 4 West. L. R. 125; *Frank v. Gazelle Co.*, (1906), 5 West. L. R. 573. *Contra*, *International Co. v. Grant*, (1907), 4 East. L. R. 1.

**Instrument payable on contingency. Addressed to two or more drawees. 18.** An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect. 2. A bill may be addressed to two or more drawees, whether they are partners or not; but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange.

*Imp. §§ 6, 11.* An instrument promising or ordering the payment of a stated sum on the arrival of a designated ship, or "three days after the sailing of the *Sally Brown*" or "five days after the final sailing of the ship *America*, with F. B. on board," is not a note or bill. — *Wood v. Higginbotham*, (1813), 2 Rev. de Leg. 28; *Dooley v. Ryarson*, (1873), 1 Q. L. R. 219; *Duchaine v. Maguire*, (1882), 8 Q. L. R. 295. A promise to pay a stated sum "at the sale, or delivery, of the timber marked P. A. in Quebec or elsewhere," is not a note. — *Russell v. Wells*, (1838), 5 U. C. Q. B. (O. S.) 725. An order to "pay \$341. 46 for lumber used in your house, one month after the building is finished," is not a bill. — *Garner v. Hayes*, (1884), 10 O. A. R. 24. Nor is an order to pay \$ 400 "on completion of contract on building now in course of erection." — *Thomson v. Huggins*, (1896), 23 O. A. R. 191. Similarly, the negotiable character of a note is destroyed by the addition of the following clause: "This note to be held as collateral security." — *Hall v. Merrick*, (1877), 40 U. C. Q. B. 566; *Sutherland v. Patterson*, (1884), 4 O. R. 565. See also, *Davis v. Robertson*, (1897), Q. R. 6 Q. B. 264.

**Payee, drawer or drawee. Two or more payees. Holder of office as payee. 19.** A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee. 2. A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. 3. A bill may be made payable to the holder of an office for the time being.

*Imp. §§ 5, 7.* An instrument in the form of a bill in which the drawer is designated as payee may be treated either as a bill or a note. — *Golding v. Waterhouse*, (1876), 16 N. B. 313. An instrument promising to pay "E. S. R. or J. F., his guardian," was held not to be a valid note. — *Reed v. Reed*, (1853), 11 U. C. Q. B. 26. But in an action by the husband, an instrument promising to pay "D. or to his wife, and to no other person," was held to be in effect payable to D. and therefore a valid note. Query, if the wife had survived D. and brought the action. — *Moodie v. Rowatt*, (1856), 14 U. C. Q. B. 273. An instrument payable to the "payee or his heirs" was held not a valid note. — *Doak v. Robinson*, (1868), 12 N. B. 279. The validity of a note payable to a public officer, viz., "to A. B., treasurer of, etc., or to his successor or successors in office, or order," is not effective by the reference to successors. *Semble*, that the instrument might be sued upon by A. B.'s successor in his own name. — *McGregor v. Daly*, (1855), 5 U. C. C. P. 126. An instrument payable to the treasurer of an unincorporated association, viz., "to J. P., treasurer of the building committee of the congregation of St. John's Church," is a

valid note payable to J. P. and in the event of his death must be sued upon by his executor. — *Patton v. Melville*, (1861), 21 U. C. Q. B. 263. Cp. *Township v. McBride*, (1869), 29 U. C. Q. B. 13.

**Drawee to be named.** 20. The drawee must be named or otherwise indicated in a bill with reasonable certainty.

Imp. § 6. An instrument in the form of a bill except that no drawee is designated is not a bill. — *Forward v. Thompson*, (1854), 12 U. C. Q. B. 103; *McPherson v. Johnston*, (1894), 3 B. C. 465.

**Transfer words. Negotiable bill. When payable to bearer. Certainty of payee. Fictitious payee.** 21. When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not negotiable. 2. A negotiable bill may be payable either to order or to bearer. 3. A bill is payable to bearer which is expressed to be so payable, or on which the only or last endorsement is an endorsement in blank. 4. Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty. 5. Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer.

Imp. §§ 7, 8. *Non-negotiable instruments.* — As to the rights and obligations of parties to non-negotiable notes, see: *West v. Brown*, (1847), 3 U. C. Q. B. 290; *Jones v. Whitty*, (1859), 9 L. C. R. 191; *Township v. McBride*, (1869), 29 U. C. Q. B. 13; *McCorkill v. Barrabé*, (1885), M. L. R. 1 S. C. 319; *Bard v. Francoeur*, (1894), Q. R. 7 S. C. 315. The phrase "non-negotiable and given for security" not only deprives an instrument in the form of a note of its negotiable character but deprives it of its character as a note. — *Davis v. Robertson*, (1897), Q. R. 6 Q. B. 264. See *Harvey v. Bank*, (1888), 16 S. C. R. 714.

*Blank indorsement followed by special indorsement.* — Before the enactment of subsection 3 a bill or note payable to order and indorsed in blank was negotiable by delivery notwithstanding a subsequent special indorsement. — *Sovereign Bank v. Gordon*, (1905), 9 O. L. R. 146, 150.

*Certainty of payee.* — The designation of the payee is sufficiently certain in a note payable to "the trustees and assignees of the estate of M., G. & A." — *Auldjo v. McDougall*, (1833), 3 U. C. Q. B. (O. S.) 199. So also a note payable to the "estate of D." is valid. — *Dominion Bank v. Beacock*, (1889), 9 C. L. T. 252. But a note in which a blank is left for the payee's name is not valid until completed. — *Mutual Ins. Co. v. Porter*, (1851), 7 N. B. 230. It may be proved that the name John Souther & Son was intended to designate John Souther & Co. — *Wallace v. Souther*, (1889) 16 S. C. R. 717. A note payable to G. "for the use of M.," or to G. "on account of M.," is a valid note payable to G. — *Munro v. Cox*, (1870), 30 U. C. Q. B. 363; *Newton v. Allen*, (1817), 2 Rev. de Leg. 29; *Clark v. Esson*, (1820), 2 Rev. de Leg. 30.

*Fictitious payee.* — Subsection 5 involves the difficult question as to the meaning of the terms "fictitious or non-existing." Chalmers says: "This subsection was inserted (in the Imperial Act) in committee in place of a clause working out in detail the effect of the cases. The words 'or non existing' seem superfluous; but they were probably intended to cover the case of *Ashpitel v. Bryan* (1864), 3 B. & S. 474," (where a clerk drew and indorsed a bill as attorney for his deceased employer, upon a debtor of the estate, who accepted with full knowledge of the facts). — *Bills of Exchange Act*, p. 21. In *London Life Insurance Co. v. Molson's Bank* (1904), 3 O. L. R. 238, one Nickold was the assistant superintendent of the London company, as well as the local agent at one of its branches with sole control of the business there. He sent in to the head office a number of applications for life insurance, which, with the exception of five, were on the lives of fictitious persons, and as to these five the insurance had subsequently lapsed, but the company was not informed of this fact. Subsequently Nickold, representing that the insured were dead, and the claims payable under the policies, sent in to the head office claim papers, filling in the names of fictitious claimant, and affixing their alleged signatures thereto. Cheques for the amounts alleged to be due were drawn by the company in favour of the alleged claimants, and payable at a branch of the defendant bank. These cheques were sent to Nickold, whose duty it was to turn them over to the claimants. Nickold upon receipt of the cheques signed the payees' names thereto, and these cheques were in good faith paid by the bank, and the amounts charged to the company's account. In an action by the drawers against the bank it was held that the plaintiffs were not entitled to recover on the ground that the payees were fictitious or non-existing persons although there were real persons of the same name in or near Ottawa. The Ontario Court deemed the case to be governed by *Bank of England v. Vagliano*, (1891) A. C. 107. In the *Vagliano* case the bills purported to be drawn by one Vucina, a correspondent of the acceptors, but were entirely the production of one Glyka, a clerk in the service of Vagliano Bros. Glyka fraudulently procured the necessary forms to be printed and filled them up, inserting the name of Vucina, as drawer, and C. Petridi & Co., as payees. A firm of C. Petridi & Co. carried on business at Constantinople and had been the payees of some bills of exchange previously drawn by Vucina upon Vagliano Bros. Vagliano Bros. accepted the bills and made them payable at the Bank of England, where they kept an account, and the Bank of England was requested by the acceptors to pay the bills at maturity. C. Petridi & Co. knew nothing concerning the bills and their name was indorsed on the same by Glyka



and they were paid to the persons presenting them at maturity. By accepting the bills Vagliano Bros. were precluded from denying the genuineness of the signature of the drawer. The indorsement of C. Petridi & Co. having been forged the question as to whether the Bank of England was nevertheless authorized to pay the instrument depended solely upon the question whether the payees could under the circumstances be regarded as fictitious or non-existing persons within the meaning of the Act. The English Court of Appeal (Esher, M. R., dissenting) after an elaborate review of the cases decided prior to the Bills of Exchange Act, 1882, held that the payees were not fictitious or non-existing persons under the law as it existed prior to the Act and that the Act made no change in this regard. The House of Lords (Lord Bramwell and Lord Field dissenting) reversed the decision of the Court of Appeal. Lord Herschell, in speaking of the view of the Court of Appeal that the section should be interpreted as meaning that the bill may be treated as a bill payable to bearer as against any person who had knowledge of the fact that the payee was fictitious or non-existing, says: "With all respect I am unable to see why it must mean this. I confess I cannot altogether follow the meaning of the words fictitious 'as regards' the acceptor. I have a difficulty in seeing how a payee, who is in fact a 'fictitious' person in the sense in which that word is being used, can be otherwise than fictitious as regard all the world — how such a payee can be 'fictitious' as regards one person and not another. The truth is the words 'as regards' the acceptor are treated as equivalent to the words 'to the knowledge of' the acceptor. But I do not think these expressions are synonymous. It seems to me that to import into the statute after the words 'fictitious person' the words 'as regards' the acceptor or drawer, as the case may be, and then to interpret those words as meaning 'to the knowledge of' only tends to obscure the fact that the condition that the payee must be fictitious to the knowledge of the person sought to be charged as upon a bill payable to bearer is being introduced into the enactment. For the reasons I have given I find myself compelled to the conclusion, notwithstanding my respect for those who have expressed a contrary view, that in order to establish the right to treat a bill as payable to bearer it is enough to prove that the payee is in fact a fictitious person and that it is not necessary if it be sought to charge the acceptor to prove in addition that he was cognizant of the fictitious character of the payee. . . . Whenever the name inserted as that of the payee is so inserted by way of pretence merely without any intention that payment shall only be made in conformity therewith the payee is a fictitious person within the meaning of the statute, whether the name be that of an existing person or of one who has no existence and the bill may in each case be treated by a lawful holder as payable to bearer." In *Clutton v. Attenborough & Son*, (1897) A. C. 90, the drawer of certain cheques was induced to draw them by the fraudulent certificate made by an employee that certain work had been done or materials supplied by a person named George Brett. The cheques so drawn were taken by the employee and the name of George Brett indorsed thereon. There was no such person as George Brett, nor had any work been done or material supplied. The cheques were paid in ordinary course of business. The House of Lords held that the drawer of the cheques was entitled to recover the amount paid by the drawees. "The statute expressly provides that where the payee is a fictitious or non-existing person the bill (and under the statute a cheque is to be regarded as a bill) may be treated as a bill payable to bearer. These cheques were in favour of a person of the name of Brett. He was fictitious, because that name had been provided by a person who wished to commit a fraud and to appropriate the money of his employer. He knew no person of that name and the person who got the cheques knew no one of that name, and in the language of the statute I think these were therefore cheques in favour of a fictitious person and a non-existing person." The doctrine laid down in the *Vagliano* case and in *Clutton v. Attenborough & Son* is somewhat modified by *Vinden v. Hughes*, (1905) 1 K. B. 795; and *Macbeth v. North & South Wales Bank*, (1908) 1 K. B. 13; affirmed, (1908) A. C. 137. In the *Macbeth* case one White, by falsely representing that he had agreed to buy from a man named T. A. Kerr certain shares in a company, induced the plaintiff to give him a cheque payable to T. A. Kerr or order for the purpose of handing the same to Kerr in exchange for the scrip and transfer of the shares. Instead of so doing, White forged Kerr's indorsement to the cheque and paid it into his own account with the defendant bank, which credited him with the amount and obtained payment of the cheque from the drawee. White had in fact never agreed to buy any shares from Kerr, and Kerr did not hold any shares in the particular company. The Court of Appeal (per Lord Alverstone, C. J.) held that under the circumstances Kerr could not be regarded as a fictitious or non-existing person. Lord Alverstone said: "I agree that the question as to a fictitious or non-existing person cannot be answered by simply asking if there is someone who corresponds with the name. The name of some distinguished person might be inserted in a bill, but he might be a fictitious or non-existing person for the purpose of the section we have to consider. . . . It is very important to remember that in *Vagliano's* case the instrument was a bill of exchange in the ordinary sense of the word, and the point raised was raised by the acceptor. The acceptor of a bill protects the credit of the drawer of the bill. It does not matter in the least to the acceptor who the payee is. When a bill of exchange is presented to a person for acceptance the drawer asks him to honour his signature as drawer and to accept the bill, and the credit of the drawer may be partially protected even though the acceptor does not choose to go the full length of accepting the bill; therefore in dealing with a payee of a bill in the ordinary sense of the word very different considerations from a commercial and mercantile standpoint arise to those which arise when the particular form of a bill of exchange which is called a cheque upon a bank is being dealt with. It is for that purpose that it is so important

to see whether in the terms formulated by Lord Herschell the payee designated in the bill is a real person intended by the drawer to receive payment by himself or by some transferee. It is the drawer who selects and inserts the name which is put in the body of the bill as being the payee's name; therefore, if the person who inserted the name in the bill knew that the person was fictitious or non-existent, then the consequences follow that the bill may be treated as against the acceptor (if I may use the expression) as being a bill to bearer with the consequences pointed out in Vagliano's case . . . Applying Lord Herschell's test, we must consider whether in any given case when the drawer of a cheque inserts a payee's name he intends the payee to receive payment by himself or by some transferee from him; in other words, whether he intends that the payee who has to indorse the cheque payable to order shall receive payment. In the present case it is not disputed that so far as the plaintiff Macbeth is concerned there was a real transaction . . . It is not suggested that the plaintiff had the least idea that any one would receive the proceeds of the cheque, except a person named Kerr, an existing person bearing that name, who, by the fraud of White he had been induced to believe, did possess the 5000 shares . . . He did not put in the name of a non-existing person, but he put in the name of a person from whom, as he believed, the shares were coming and to whom alone the money was to go." In *City Bank v. Rowan*, (1893), 14 L. R. (L.) (N. S. W.) 126; 9 W. N. (N. S. W.) 122, which arose under the corresponding section of the New South Wales Act (identical in phraseology) an action was brought on an overdue promissory note executed by defendants in favour of James Shackell & Co., or order, and purporting to be indorsed by the payee to J. & Co. and by the latter to the plaintiffs, who received it under circumstances which would ordinarily constitute them holders in due course. One W. Shackell, purporting to act on behalf of James Shackell & Co., of Melbourne, sold a lot of wool to defendants, resident in Sydney, and upon delivering to the latter a bogus store warrant for the wool, signed by one Jones, who claimed to be the Sydney representative of James Shackell & Co., received the promissory note in question. There had once been a Melbourne firm of the name of James Shackell & Co., but it had gone out of business, although James Shackell still lived in Melbourne. The signature of James Shackell & Co. on the back of the note was forged and the sole question therefore was whether under the circumstances the instrument could be treated as one payable to bearer. The Court held that the payees were fictitious persons within the Vagliano case, and that the plaintiffs could recover on it as if it were payable to bearer. The Court went on the ground that whenever the name inserted as that of a payee in a bill or note is inserted without any intention that payment shall only be made in conformity therewith, that the payee becomes a fictitious person within the meaning of the Act, and, *semble*, that a payee is fictitious within the meaning of the Act, though an existing person, if he has no interest in the instrument and no right to indorse it or to be paid upon it. Maclaren doubts this latter test and says that "the test laid down in the Australian case was not the proper one, and the fact that the payees had no interest in the note, and no right to indorse it or to be paid upon it, did not make them fictitious persons". — *Bills, notes, and cheques*, p. 75. Speaking of the Ontario case *Falconbridge* says: "In the London Life case there was a real drawer. In the Vagliano case the name of the pretended drawer was forged, but the acceptor was estopped from denying the genuineness of the drawer's signature. In neither case was there any genuine transaction on which the bills could be based. A real difference between the two cases is that in the London Life case the drawer really intended its cheques to be paid to the named payees, while in the Vagliano case the drawer had no intention to pay anyone, his name having been forged . . . It is difficult to reconcile *Vinden v. Hughes* and *Macbeth v. North & South Wales Bank with London Life v. Molsons Bank* . . . If the local insurance agent in that case (the Ontario case) had invented names instead of using the names of actual persons who lived in his district, cheques made out in favour of such invented names would have been payable to 'non-existing' persons within the principle of *Clutton v. Attenborough*. The agent for his own purposes, and doubtless in order to lessen the risk of the company's discovering that the insurances had no real existence, used the names of real persons. Such persons were intended by the drawer to receive payment." — *Falconbridge, Banking and bills of exchange*, pp. 378, 380. Speaking of the Ontario case Maclaren says: "The company did not know the payees, and so far as there was any intention as to payment of the cheques, the intention was that they should be paid to the beneficiaries in whose names the bogus claims had been made, who were in fact no other than their Ottawa agent, Niblock, masquerading under these various names. The cheques were intended to be paid to the beneficiaries under the various policies, and no such beneficiaries existed. If a bogus claim was made in the name of John Smith pretending to act as the administrator or executor of Thomas Jones, or as the beneficiary named in the policy on the life of Thomas Jones, the fact that there had been a Thomas Jones in or near Ottawa when the policy was issued, and that there was also a John Smith there at the time the cheque for the pretended loss was issued, would surely not make John Smith, the payee, other than a fictitious person when the cheque was issued to him as executor or administrator or beneficiary of Thomas Jones, an office or capacity he never filled or occupied, and when the company had no knowledge of his existence, and only thought of him as the occupant of an office which he never pretended to fill." — *Bills, notes, and cheques*, p. 75. See also *Bank v. the King*, (1906), 38 S. C. R. 258. A note payable to a person, deceased when the note was made, may be enforced by his executors. — *Grant v. Wilson*, (1814), 2 Rev. de Leg. 29. Before the enactment of § 22 a note payable to a "fictitious payee," without words of negotiability, was not negotiable. — *Williams v. Noxon*, (1853) 10 U. C. Q. B. 259. It has been held under the corresponding section



of the Tasmanian Bills of Exchange Act that a note made in favour of a company not in existence at the time the note is made, such fact being known to the maker, may be treated as payable to bearer. — *Rutherford C. M. Co. v. Ogier*, (1905) Tas. L. R. 156. The corresponding section in the Negotiable Instruments Law in force in most of the American States provides that an instrument is payable to bearer "when it is payable to the order of a fictitious or non-existing person and such fact was known to the person making it so payable." For the American law see: *Seaboard National Bank v. Bank of America*, (1908), 193 N. Y. 26; *Trust Co. of America v. Hamilton Bank*, (1908), 112 N. Y. Supp. 84; *Snyder v. Corn Exchange National Bank*, (1908), 221 Pa. 599; *Jordan Marsh Co. v. Bank*, (1909), 201 Mass. 397.

**Bill payable to order when. When payable to person or order.** 22. A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable. 2. Where a bill, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option.

Imp. § 8. Before the adoption of this section a bill or note not made payable to "order" or "bearer" was not negotiable. — *West v. Brown* (1846), 3 U. C. Q. B. 290; *Jones v. Whitty*, (1859), 9 L. C. R. 191; *Banque du Peuple v. Ethier*, (1869), 1 Rev. Leg. 47; *McCorkill v. Barrabé*, (1885), M. L. R. 1 S. C. 319; *Mallette v. Sutcliffe*, (1894), Q. R. 5 S. C. 430. But this section has changed the law. — *Ward v. Bank*, (1894), Q. R. 3 Q. B. 122; *Bank of British North America v. Warren*, (1909), 19 O. L. R. 257. An instrument payable to the payee's order is equivalent to one payable to the payee or his order, and indorsement by the payee is not a condition precedent to presentment and demand by him. — *Myers v. Wilkins*, (1849), 6 U. C. Q. B. 421.

**Payable on demand when. Endorsed when overdue.** 23. A bill is payable on demand: a) Which is expressed to be payable on demand or on presentation; or, b) In which no time for payment is expressed. 2. Where a bill is accepted or endorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any endorser who so endorses it, be deemed a bill payable on demand.

Imp. § 10. "The corresponding section of the English Act has in subsection 1, clause (a), the words 'or at sight' after the words 'on demand.' These words were in the Canadian bill as introduced into the House of Commons in 1890, but were struck out in committee. If a bill is not payable on demand, three days of grace are, in every case, where the bill itself does not otherwise provide, added to the time of payment (§ 42). The effect of the Act is that bills payable on presentation are demand drafts and are not entitled to days of grace, but that sight drafts, in accordance with the custom prevailing in this country prior to the Act, are entitled to days of grace. In England bills payable at sight as well as those payable on presentation are demand drafts and not entitled to days of grace." — *Falconbridge, Banking and bills of exchange*, pp. 383, 384. Presentment is a condition precedent to the liability of one who indorses after maturity. — *Davis v. Dunn*, (1849), 6 U. C. Q. B. 327. As to when presentment must be made in such a case, see §§ 86 (b), 180.

**Determinable future time. Sight. Specified event.** 24. A bill is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable: a) At sight or at a fixed period after date or sight; b) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain.

Imp. § 11. The following instrument matures 41 months after date, if not paid 17 months after date, and is therefore sufficiently certain as to time of payment: "Yonge Street, 29th April, 1839. Seventeen months after date, I promise to pay J. H., or order, the sum of £50, without interest; or, 3 years and 5 months after date, with two years' interest, for value received. (Sgd.) M." — *Hogg v. Marsh*, (1849), 5 U. C. Q. B. 319. A note promising to pay on a stated day, or earlier on demand if the maker should sell certain land, is sufficiently certain as to time of payment. — *Elliott v. Beech*, (1886), 3 Man. 213. A note promising to pay on a stated day, with a proviso that the payee might at any time declare it due in the event that he deemed himself insecure, is sufficiently certain. — *Massey Co. v. Perrin*, (1892), 8 Man. 457.

**Inland bill defined. Other bills. Presumptions.** 25. An inland bill is a bill which is, or on the face of it purports to be: a) Both drawn and payable within Canada; or b) Drawn within Canada upon some person resident therein. 2. Any other bill is a foreign bill. 3. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

Imp. § 4.

**Bill or note. Option.** 26. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

Imp. § 5. *Cp. Charlebois v. Montreal*, (1898), Q. R. 15 S. C. 96.

**Valid bill. Not dated. Statement of value. Statement of place. Irregular date.**  
**27.** A bill is not invalid by reason only: a) That it is not dated; b) That it does not specify the value given, or that any value has been given therefor; c) That it does not specify the place where it is drawn or the place where it is payable; d) That it is antedated or postdated, or that it bears date on a Sunday or other non-judicial day.

Imp. §§ 3, 13. The defence of illegality under a statute forbidding or penalizing the transaction of business on Sunday, although available against an immediate party, is not available against a holder in due course. — *Houliston v. Parsons*, (1852), 9 U. C. Q. B. 681; *Crombie v. Overholzer*, (1853), 11 U. C. Q. B. 55; *Coté v. Lemaieux*, (1859), 9 L. C. R. 221; *Kearney v. Kinch*, (1863), 7 L. C. Jur. 31.

**Sum certain. Interest. Instalments. Default. Exchange. Figures and words.**  
**With interest. 28.** The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid: a) With interest; b) By stated instalments; c) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due; d) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill. **2.** Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable. **3.** Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof.

Imp. § 9. *Instalments.* — *Semble*, that an instrument in the form of a note promising to pay £102 "in yearly proportions" is a valid note payable in two annual instalments. — *McQueen v. McQueen*, (1852), 9 U. C. Q. B. 536. A note payable in instalments matures as to each instalment upon the day it becomes due, and an action for that instalment may be brought immediately. — *Clearihue v. Morris*, (1820), 2 Rev. de Leg. 30. So the indorser of a note upon which the interest is payable in instalments, is discharged by the failure of the holder to make presentment and give notice of dishonour. — *Jennings v. Napanee Brush Co.*, (1884), 4 C. L. T. 595. And a purchaser of such a note with notice that an instalment of interest is overdue and unpaid, is not a holder in due course. — *Moore v. Scott*, (1906), 5 West. L. R. 8; s. c. (1907), 5 West. L. R. 381. See *Union Investment Co. v. Wells*, (1908), 39 S. C. R. 625. See also *Berton v. Bank*, (1863), 10 N. B. 493.

*Exchange.* — Before the adoption of subsection 1 (d) it had been held that a bill payable with exchange was not valid. — *Palmer v. Fahnestock*, (1859), 9 U. C. C. P. 172; *Fahnestock v. Palmer*, (1860), 20 U. C. Q. B. 307; *Nash v. Gibbon*, (1860), 9 N. B. 479; *Grant v. Young*, (1864), 23 U. C. Q. B. 387; *Wood v. Young*, (1864), 14 U. C. C. P. 250; *Saxton v. Stevenson*, (1874), 23 U. C. C. P. 503.

*Interest.* — Interest on a note payable with interest is part of the debt and not damages for detaining the debt. — *Crouse v. Park*, (1847), 3 U. C. Q. B. 458. Interest at the stipulated rate continues running after, as well as before, maturity. — *Howland v. Jennings*, (1861), 11 U. C. C. P. 272. Interest on a note payable on demand with interest runs from the date of the note. — *Baxter v. Robinson*, (1816), 2 Rev. de Leg. 439; *Dechantal v. Pominville*, (1860), 6 L. C. Jur. 88. See also *Heavyside v. Munn*, (1817), 2 Rev. de Leg. 439.

**True date; presumption. 29.** Where a bill or an acceptance, or any endorsement on a bill, is dated, the date shall, unless the contrary is proved, be deemed to be the true date of the drawing, acceptance, or endorsement, as the case may be.

Imp. § 13 (1). See *Hays v. David*, (1852), 3 L. C. R. 112; *Evans v. Cross*, (1865), 15 L. C. R. 86. An "I. O. U." bearing date before the commission of an act of bankruptcy by the maker is not *per se* evidence of the existence of the petitioning creditor's debt before the act of bankruptcy. — *Hutchins v. Cohen*, (1869), 14 L. C. Jur. 85, 87.

**Undated bill payable after date. Inserting wrong date. Liability of holder. 30.** Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at sight or at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly: Provided that: a) Where the holder in good faith and by mistake inserts a wrong date; and, b) In every other case where a wrong date is inserted; if the bill subsequently comes into the hands of a holder in due course the bill shall not be voided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Imp. § 12. — The date of an undated indorsement may be proved. — *Inkiel v. Laforest*, (1879), Q. R. 7 Q. B. 456.

**Perfecting bill. Authority. 31.** Where a simple signature on a blank paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount, using the signature for that of the drawer or acceptor, or an endorser; and, in like manner,



when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

Imp. § 20 (1). — A person in possession of an incomplete bill or note *prima facie* has authority to complete it, e. g., by filling in the blank for the name of the payee or the rate of interest. — *Burton v. Goffin*, (1897), 5 B. C. 454; *British Columbia, etc., Agency v. Ellis*, (1898), 6 B. C. 80; *Gardner v. Lecker*, (1910), 16 *Rev. de Leg. (N. S.)* 14. Similarly, the person in possession of a blank form for a promissory note signed and delivered by defendant, *prima facie* has authority to convert the instrument into a note by filling in the blanks as he may see fit. — *McInnes v. Milton*, (1870), 30 U. C. Q. B. 489.

**When to be complete. Reasonable time. 32.** In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given: Provided that if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given. 2. Reasonable time within the meaning of this section is a question of fact.

Imp. § 20 (2). — If the person in possession of a note, blank as to date and amount, completes it in accordance with the authority actually conferred upon him by the signer, the signer is of course liable to the holder. — *Sandford v. Ross*, (1841), 6 U. C. Q. B. (O. S.) 104. If the person in possession of a note indorsed by defendant before it was signed by the maker, secures, in breach of his authority, the signature as maker of a person other than the person directed by the defendant, and issues the note, a purchaser with notice of the fraudulent completion of the note cannot recover upon it. — *Rossin v. McCarty*, (1849), 7 U. C. Q. B. 100; *Hanscome v. Cotton*, (1857), 15 U. C. Q. B. 42. Nor can a purchaser after maturity. — *Frazer v. Ekstrom*, (1899), 6 *Terr. L. R.* 464. But if the holder is an innocent purchaser before maturity for value and without notice, he may recover notwithstanding the fraudulent completion of the instrument. — *Hanscome v. Cotton*, *supra*; *Merchants' Bank v. Good*, (1890), 6 *Man.* 339. And this is true even in the case of a note which was simply a blank form when delivered by the maker. — *McInnes v. Milton*, (1870), 30 U. C. Q. B. 489; *Bank of Nova Scotia v. Lepage*, (1889), *M. L. R.* 6 S. C. 321. However, if a signature on a blank piece of paper be delivered, not in order that it may be converted into a bill or note, but for the purpose of indicating the signer's address, or to give as a receipt, the signer is not liable, even to an innocent purchaser before maturity for value and without notice. — *Ford v. Auger*, (1874), 18 *L. C. Jur.* 296. See *Banque Cartier v. Lescard*, (1886), 13 *Q. L. R.* 39. Nor is one who signs and delivers a blank form for a promissory note for some purpose other than its conversion into a note, liable, in the event of its fraudulent completion, even to a holder in due course. — *Hubbert v. Home Bank*, (1910), 20 *O. L. R.* 651; *Ray v. Willson*, (1911), 19 *O. W. R.* 470. Nor is one who signs a blank form for a promissory note and delivers it upon condition that in the event of the happening of a certain contingency it may then but not otherwise be converted into a note, liable upon it even to a holder in due course, in case it is fraudulently completed and negotiated before the happening of the contingency. — *Hubbert v. Home Bank*, *supra*; *Ray v. Willson*, *supra*. In *Hubbert v. Home Bank* the plaintiff signed, indorsed in blank, and delivered to S. an instrument in the following form:

"§ 440.50

Oct. 1st 1908.

December 1st. After date I promise to pay to the order of myself  
dollars at

Value received."

The instrument was delivered to S., who was an insurance agent, upon condition that nothing should be done with it until and unless the plaintiff passed the medical examination. The plaintiff never presented himself for examination, but S. fraudulently filled in the blank in the body of the note with the amount, \$ 440.50, and the blank for the place of payment with the name of the plaintiff's bank, and negotiated the instrument to the United Empire Bank, a holder in due course. Upon presentment to the plaintiff's bank the instrument was paid. The Court assumed that the note was incomplete when delivered by the plaintiff to S., and held, adopting the reasoning in *Smith v. Prosser*, (1907) 2 *K. B.* 735, that the plaintiff could recover the amount paid by the defendant upon the note. The judgment was affirmed by D. C., and the Court of Appeal refused a motion for leave to appeal. *Britton, J.*, said: "The paper in the hands of Stirton must be treated as if 'a simple signature on a blank piece of paper' had been handed by the plaintiff to Stirton. Even if the paper had upon it some writing, so that it appeared as I have before mentioned, it would be harmless. No bank would negotiate such paper, and Stirton had no more right, under sec. 31, to fill in the amount in writing and the place of payment, than to wholly fill up a blank piece of paper with only a signature upon it. It had to be filled up before it could be used, and it was filled up by Stirton. It was not delivered to Stirton in order that it might be converted into a note or negotiated as a note. Sections 31 and 32 of the Canada Bills of Exchange Act are practically the same as sec. 20 of the English Act: (The sections are here copied.) In *Smith v. Prosser*, (1907) 2 *K. B.* 735, the language of these two sections has been dealt with and the sections have been construed. In that case the defendant signed his name on two blank lithographed forms of promissory notes, and handed these to one

of his two agents, with instructions that they were to remain in the custody of his attorney until the defendant should by telegram or letter give instructions for their issue as notes, and as to the amount for which they should be filled up. After the defendant left, the person to whom defendant had handed the documents, without waiting for instructions from the defendant, and in fraud of the defendant, filled in the blanks and sold them to the plaintiff, 'who took them honestly and in good faith and without notice of the fraud, and gave full value for them.' It was held, 'that, as the defendant handed the notes to his agent as custodian only, and not with the intention that they should be issued as negotiable instruments, he was not estopped from denying the validity of the notes as between himself and the plaintiff, and that the action was not maintainable.' As stated before, I am considering this as if 'a simple signature on a blank piece of paper' was handed by the plaintiff to Stirton. It was, in fact, a form of a promissory note. The plaintiff had written nothing on it, but his signature on the face and again on the back. He will not say that the figures '\$ 440.50' and 'Oct. 1st' and 'December 1st', and the word 'myself', may not have been on it when he signed, but that is as far as he will go. It was not given to Stirton that it might be 'converted into a note' or that it might be used or negotiated as a note. The plaintiff signed the paper intending it not as a note but as a promise to pay premium for life insurance in case he submitted himself for, and passed, the necessary medical examination. He did not pass such examination; he did not even see the medical man. Stirton, who held the plaintiff's signature, was immediately notified by the plaintiff, but he, in fraud of the plaintiff, completed the form as a note, and negotiated it with the United Empire Bank. In my opinion, the case cited governs the present case, and, upsetting as that case may be of the opinions of bankers here, as to the true meaning of the sections of the Bank Act referred to, I must follow the authority. I quote from the judgments in that case: Vaughan Williams, L. J., at p. 744: 'In my judgment it is of the very essence of the liability of a person signing a blank instrument that the instrument should have been handed to the person, to whom it was in fact handed, as an agent for the purpose of being used as a negotiable instrument, and with the intention that it should be issued as such'. It seems to me clear that what the plaintiff did was not to give to Stirton a promissory note or a paper that could be converted into a promissory note, or that Stirton would have any right or authority to deal with in any way until he should get that authority after the plaintiff's application for insurance had been accepted." In *Smith v. Prosser*, (1907) 2 K. B. 735, the defendant signed and delivered an unstamped promissory note blank to T. with instructions to retain it until defendant notified T. and one W., to complete and issue the paper as a note. T. fraudulently completed the note, designating the plaintiff as payee, and issued it to the plaintiff, who paid value and acted in good faith, though he knew that T. had completed the instrument and that T. held it for the use of the defendant. The Court of Appeal held that the plaintiff could not recover, resting its decision not on the fact of the plaintiff's notice of the completion of the instrument by T. but on the ground indicated in *Hubbert v. Home Bank*. In *Ray v. Willson*, (1911), 19 O. W. R. 470, 476, the defendant signed and delivered a promissory note blank to T. to be held by him until instructed by the defendant to complete and negotiate it. T., without instructions, completed the instrument, making it payable to himself for \$ 1000, and pledged it to the plaintiff, a holder in due course, as collateral security for a personal debt. In holding that the plaintiff could not recover, the Court of Appeal, although noticing the distinction between the facts before it and those in *Smith v. Prosser*, followed *Hubbert v. Home Bank*, which was referred to as a case "where the facts were substantially the same as in the present case," in adopting the reasoning in *Smith v. Prosser*. Mr. Justice Maclaren said: "that Thompson was given no authority to fill up or issue the note unless he, the defendant, on receipt of the bills for the repairs should not have the money to pay them and should so inform Thompson, which brings the case fully, so far as the facts and terms of delivery are concerned, precisely within the case of *Smith and Prosser*; while in that case it was said that the Act did not apply, on account of the blank promissory note form not being stamped, it was held by the English Court of Appeal that the Act had not in this respect altered the law, and it was followed in our own Courts in *Hubbert v. Home Bank*, 15 O. W. R. 277, 533, 20 O. L. R. 651, where the facts were substantially the same as in the present case. By section 39 of the Act every contract on a bill is incomplete and revocable until delivery of the instrument in order to give effect thereto. In *Smith v. Prosser* the Court held that there had been no delivery to give effect to the instrument but that it was delivered to Telfer as a mere custodian until he should receive further instructions, and that it was not delivered in order that it might be converted into a bill so that section 31 would not apply. In the reasons of appeal and before us it was claimed that *Smith v. Prosser* was not in point because it was subject to what is our section 32 and was not enforceable because not filled up in accordance with the authority, and because *Smith* was not a holder in due course, as the note was not complete and regular when first shewn to him and he had notice that it was being completed pursuant to a limited authority. This is quite true, but the action was not dismissed on that account, but because it had never been delivered by *Prosser* to be completed as a bill, and consequently could not become a bill binding upon him. It is argued that here the plaintiff can recover as a holder in due course under the proviso of section 32 which provides that 'if any such instrument after completion is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.' It will be observed that this applies only 'to any such instrument,' that is to such an instrument as is mentioned in section 31, and one which has been delivered



by the signer in order that it may be 'converted into a bill,' and does not apply to an instrument like this, delivered merely to be held to a bailee or custodian until further instructions are received from the signer. It is not pretended that such instructions were ever given, so that the instrument never became a note for want of a proper delivery." In each of the above cases *Lloyds' Bank v. Cooke*, (1907) 1 K. B. 794, was distinguished. In that case the defendant was induced to sign as co-maker with C. a blank promissory note stamp to be completed by C. as a note payable to plaintiff for £250. C. fraudulently completed the instrument by making it payable to the plaintiff for £1000, and issued it for value to the plaintiff who took in good faith and without notice of the completion of the instrument by C. The Court of Appeal held that the defendant was on common law principles estopped from denying his liability on the instrument; and that the plaintiff might recover, even assuming that under § 20, subsection 2, of the Imperial Act, as construed by *Herdman v. Wheeler*, (1902) 1 K. B. 361, the plaintiff (the payee) was not a holder in due course to whom the instrument had been *negotiated* after completion. In *Herdman v. Wheeler*, the defendant had signed and delivered a blank promissory note stamp to A., from whom the defendant had agreed to borrow money, and authorized A. to complete the blank by making it payable to himself for £15. A. fraudulently completed it by making it payable to the plaintiff for £30, and delivered it to plaintiff for value, who took in good faith and without notice of the completion of the instrument by A. The Court held that the plaintiff could not recover because he was the payee and not a holder in due course to whom the instrument had been *negotiated* under § 20, subsection 2, of the Imperial Act.

**Referee in case of need. Option. 33.** The drawer of a bill and any endorser may insert therein the name of a person, who shall be called the referee in case of need, to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. 2. It is in the option of the holder to resort to the referee in case of need or not, as he thinks fit.

Imp. § 15. In Quebec, before the enactment of subsection 2, presentment to the referee in case of need was required. — Civil Code, Art. 2306.

**Stipulations limiting or waiving rights. 34.** The drawer of a bill, and any endorser, may insert therein an express stipulation: a) Negating or limiting his own liability to the holder; b) Waiving, as regards himself, some or all of the holder's duties.

Imp. § 16. As to the liability of an indorser without recourse, see *Dumont v. Williamson*, (1866), 2 U. C. L. J. 219, *Bank of Ottawa v. Harty*, (1906), 12 O. L. R. 218, and § 138. As to the authority in Quebec of the curator of an insolvent indorser to waive proceeding upon dishonor, see *Re Boutin*, (1897), Q. R. 12 S. C. 186; *Denenberg v. Mendelsohn*, (1903), Q. R. 23 S. C. 128; *Molsons Bank v. Steel*, (1903), Q. R. 23 S. C. 316. See note to § 92, *infra*.

#### *Acceptance and interpretation.*

**Acceptance defined. Drawee's name wrong. 35.** The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. 2. Where in a bill the drawee is wrongly designated or his name is misspelt, he may accept the bill as therein described, adding, if he thinks fit, his proper signature, or he may accept by his proper signature.

Imp. § 17 (1). The following writing indorsed by the drawee upon a bill payable in instalments upon payment of the first instalment, is an acceptance of the whole bill: "Paid on the within § 741, Aug. 12, 61." — *Berton v. Bank*, (1863), 10 N. B. 493. The drawee of a bill addressed to a person "as" officer of a corporation is the person named and not the corporation of which he is an officer; and an acceptance written by him on the instrument, since it cannot be the acceptance of the corporation, will be construed to bind him personally even though he add to his signature his official title. — *Bank of Montreal v. De Latre*, (1848), 5 U. C. Q. B. 362; *Foster v. Geddes*, (1856), 14 U. C. Q. B. 239; *Bank of Montreal v. Smart*, (1860), 10 U. C. C. P. 15; *Laing v. Taylor*, (1876), 26 U. C. C. P. 416; *Madden v. Cox*, (1880), 5 O. A. R. 473. But see *Robertson v. Glass*, (1869), 20 U. C. C. P. 250. Similarly, a bill drawn upon, and accepted by, a person "as" executor of a designated estate, binds the executor personally. — *Campbell v. Mackay*, (1892), 24 N. S. 404. The same rule applies when the drawee is designated by his official title without naming him. — *Madden v. Cox*, *supra*. The drawees of a bill drawn upon an unincorporated association by its name are the individuals composing the association, and an acceptance by the officers of the association in their own names "as" officers, binds them but not the other members. — *McDougall v. McLean*, (1893), 1 Terr. L. R. 30. See *Quebec Bank v. Miller*, (1885), 3 Man. 17.

**Form of acceptance. Mere signature. 36.** An acceptance is invalid unless it complies with the following conditions, namely: a) It must be written on the bill and be signed by the drawee; b) It must not express that the drawee will perform his promise by any other means than the payment of money. 2. The mere signature of the drawee written on the bill without additional words is a sufficient acceptance.

Imp. § 17 (2). Although an acceptance must be in writing, a parol offer by one upon whom a bill is about to be drawn to accept it, ripens into an enforceable, though non-negotiable, contract if one within the terms of the offer advances money in reliance upon it. — *Dunsbaugh v. Molsons*

Bank, (1878), 23 L. C. Jur. 57; *Bank of Montreal v. Thomas*, (1888), 16 O. R. 503. *Cp. Torrance v. Bank*, (1873), L. R. 5 P. C. 246, aff'g s. c. 17 L. C. Jur. 185.

**Acceptance before completion or when overdue. Acceptance after dishonour. 37.** A bill may be accepted: a) Before it has been signed by the drawer, or while otherwise incomplete; b) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment. 2. When a bill payable at sight or after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

Imp. § 18.

**Kinds: general, qualified, conditional, partial as to time or as to drawees. Specified place. 38.** An acceptance is either: a) General; or b) Qualified. 2. A general acceptance assents without qualification to the order of the drawer. 3. A qualified acceptance in express terms varies the effect of the bill as drawn and in particular, an acceptance is qualified which is: a) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated; b) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn; c) Qualified as to time; d) The acceptance of some one or more of the drawees, but not of all. 4. An acceptance to pay at a particular specified place is not on that account conditional or qualified.

Imp. § 19. An acceptance to pay "when in funds as a first preference out of the estate," is a conditioned acceptance. — *Potters v. Taylor*, (1888), 20 N. S. 362. For other instances of such acceptances, see: *Dufresne v. Jacques*, (1873), 5 Rev. de Leg. 235; *McLean v. Shields*, (1884), 1 Man. 278; *Ontario Bank v. McArthur*, (1889), 5 Man. 381. See also *Goldstein v. Gillis*, (1909), 10 West. L. R. 109. Subsection 4 differs in terms at least from the Imperial Act, § 19 (2) (c), which was copied from *Onslow's Act*, 1 & 2 Geo. 4, c. 78. Imperial Act § 19 (2) (c), provides that an acceptance is qualified which is "local, that is to say, an acceptance to pay only at a specified place. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere." Russell says: "The precise effect of the Canadian statute may not be easy to determine. It simply states that an acceptance to pay at a particular specified place is not conditional or qualified. It does not say that it might not be a qualified acceptance if the restrictive words were added and it was made payable there only and not elsewhere, but if such an acceptance were meant to be qualified, there would have been no good reason why that effect should not have been brought about by the use of the same words by which it is done in the English statute. This, however, is not a conclusive argument and the question must be considered open." — Russell on Bills, pp. 130—131. But Falconbridge says: "The difference between the English and the Canadian law may be illustrated as follows: 1. The drawee of a bill accepts 'payable at Smith & Co.' his bankers. This is a general acceptance in England (cf. *Halstead v. Skelton*, 1843, 5 Q. B. 86) and in Canada. 2. The drawee of a bill accepts it 'payable at the Union Bank and not elsewhere', or 'pay only at the Union Bank'. This is a qualified acceptance in England (*ibid.*), but a general acceptance in Canada." — Falconbridge, *Banking and bills of exchange*, pp. 414—415. For cases under Upper Canada P. S. 7 Wm. 4, c. 5, a statute copied from *Onslow's Act*, except that it was drawn to apply not only to bills but also to promissory notes payable at a particular place, —holding presentment of a promissory note payable at a particular place unnecessary in order to charge the maker, see *Commercial Bank v. Johnston*, (1845), 2 U. C. Q. B. 126; *Bank of Upper Canada v. Parsons*, (1846), 3 U. C. Q. B. 383. See also *Wilson v. Aitkin*, (1855), 5 U. C. C. P. 376; *Meyer v. Hutchinson*, (1858), 16 U. C. Q. B. 476; *Hooker v. Leslie*, (1868), 27 U. C. Q. B. 295.

**When acceptance complete. Proviso. 39.** Every contract on a bill, whether it is the drawer's, the acceptor's or an endorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto: Provided, that where an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of, the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

Imp. § 21.

#### *Delivery.*

**Requisites. Presumptions. 40.** As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery: a) In order to be effectual must be made either by or under the authority of the party drawing, accepting, or endorsing, as the case may be; b) May be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill. 2. If the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed.

Imp. § 21. A promissory note may be delivered upon condition, e. g., that it shall be indorsed or signed as maker by a certain person before it shall take effect as an obligation, and



in such a case the note is not enforceable until the fulfilment of the condition, by any person not a holder in due course. — *Brown v. Howland*, (1885), 9 O. R. 48; s. c. (1887), 15 O. A. R. 750; *Commercial Bank v. Morrison*, (1902), 32 S. C. R. 98. See also *Chandler v. Beckwith*, (1838), 2 N. B. 423. But see *Ontario Bank v. Gibson*, (1886), 3 Man. 406; s. c. (1887), 4 Man. 440. Similarly, when the defendant received from X. the plaintiff's cheque drawn to the defendant's order, with knowledge that the cheque was given to X. by the plaintiff for the purpose of being applied on a certain debt owed by X. to the defendant, the cheque must be so applied. — *Martin v. Hopkins*, (1909), 13 O. W. R. 965. But the payee of an instrument delivered upon condition who takes it as a holder in due course may enforce it notwithstanding the non-fulfilment of the condition. — *Ontario Bank v. Young*, (1901), 2 O. L. R. 761. A person who, without negligence on his part, and without intention of binding himself upon a promissory note, is induced to sign a note by false representation as to the character of the paper presented to him for signature, is not liable on the instrument even to a holder in due course. — *Graham v. Driver*, (1910), 17 O. W. R. 60; *Home Life Ins. Co. v. Matthews*, (1910), 17 O. W. R. 328; *Banque Jacques Cartier v. Lescard*, (1886), 13 Q. L. R. 39; *L'Abbe v. Normandin*, (1888), 32 L. C. Jur. 163; *Banque Jacques Cartier v. Lalonde*, (1901), Q. R. 20 S. C. 43. See also *Alloway v. Hrabi*, (1904), 14 Man. 627; *Darling v. McBurney*, (1894), Q. R. 6 S. C. 357.

**Parting with possession. 41.** Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or endorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Imp. § 21.

*Computation of time, non-juridical days and days of grace.*

**Computation of time. Last day of grace. 42.** Where a bill is not payable on demand, three days, called days of grace, are, in every case, where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that whenever the last day of grace falls on a legal holiday or non-juridical day in the Province where any such bill is payable, then the day next following, not being a legal holiday or non-juridical day in such Province, shall be the last day of grace.

Imp. § 14. Since the maker of a promissory note is not in default until the expiration of the last day of grace, seizure of chattels under a chattel mortgage given to secure a note, on the last day of grace, is premature. — *Westaway v. Stewart*, (1909), 10 W. L. R. 623. See note to § 95.

**Non-juridical days. General. Quebec. Provincial proclamation. 43.** In all matters relating to bills of exchange, the following and no other days shall be observed as legal holidays or non-juridical days: a) In all the Provinces of Canada: Sundays, New Year's Day, Good Friday, Easter Monday, Victoria Day, Dominion Day, Labour Day, Christmas Day, The birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning sovereign, any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada, the day next following New Year's Day, Christmas Day, Victoria Day, Dominion Day, and the birthday of the reigning sovereign when such days respectively fall on Sunday; b) In the province of Quebec in addition to the said days, the Epiphany, the Ascension, All Saints' Day, Conception Day; c) In any of the Provinces of Canada, any day appointed by proclamation of the Lieutenant Governor of such Province for a public holiday, or for a fast or thanksgiving within the same, and any non-juridical day by virtue of a statute of such Province.

Imp. §§ 14, 92.

**Time of payment. 44.** Where a bill is payable at sight, or at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

Imp. § 14. A promissory note dated 7th November, 1895, and payable "21st November next", is payable on the 21st November, 1896, and not on the 21st November, 1895. — *Drapeau v. Pominville*, (1897), Q. R. 11 S. C. 326.

**Sight bill. 45.** Where a bill is payable at sight or at a fixed period after sight, the time begins to run from the date of the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance, or for non-delivery.

Imp. § 14.

**Due date. 46.** Every bill which is made payable at a month or months after date becomes due on the same numbered day of the month in which it is made payable as the day on which it is dated, unless there is no such day in the month in which it is made payable, in which case it becomes due on the last day of that

month, with the addition, in all cases, of the days of grace. 2. The term 'month' in a bill means the calendar month.

Imp. § 14.

*Capacity and authority of parties.*

**Capacity of parties. Corporations. 47.** Capacity to incur liability as a party to a bill is coextensive with capacity to contract: Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or endorser of a bill, unless it is competent to it so to do under the law for the time being in force relating to such corporation.

Imp. § 22. Capacity to contract is governed by Provincial law. Difficult questions sometimes arise where the law of the place of contract and the law of the domicile of the contracting party conflict. In Quebec such controversies are decided according to the law of the domicile. — Civil Code, Art. 6. In the other Provinces the question must be decided according to the general principles of private international law. There are strong dicta in the English cases to the effect that capacity to enter into any contract is governed by the *lex domicilii*. — Cp. *Sottomayor v. De Barros*, (1879), 5 P. D. 94; *Cooper v. Cooper*, (1888), 13 A. C. 88; Dicey, *Conflict of laws*, (2d ed.) pp. 534, 538. On the other hand, in a case where the point was raised but not precisely decided (*Male v. Roberts*, (1799), 3 Esp. 163), Lord Eldon held that capacity to enter into an ordinary mercantile contract was governed by the *lex loci celebrationis*, and this is the generally accepted view in the United States. — Cp. also *In re Soltykoff*, (1891), 1 Q. B. 413. The law of the place of performance is immaterial. — *Jones v. Dickinson*, (1895), Q. R. 7 S. C. 313. Throughout Canada majority is fixed at twenty-one years. In Quebec minors emancipated by marriage or by the court have capacity to bind themselves in respect of acts of administration, and minors engaged in trade may bind themselves on contracts in respect of their business. — Civil Code, Arts. 314—323. Married women have been given extensive powers to bind their separate property in the same manner as if they were unmarried except in Quebec, where, in general, the husband's authorization is required. — Quebec Civil Code, Arts. 176, 296, 986. See further as to capacity, Quebec Civil Code, Arts. 34 (civil death) and 987 (interdiction). The capacity of corporations is discussed in the notes to the various Companies Acts reprinted in this volume.

**Effect of disability on holder. 48.** Where a bill is drawn or endorsed by a infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or endorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Imp. § 22. This section complements § 129 (c) and § 133 (b). The maker of a note payable to a corporation may not question the payee's capacity to indorse. — *Hammond v. Small*, (1858), 16 U. C. Q. B. 371; *Merchants Bank v. McLeod*, (1910), 14 West. L. R. 461. Nor can the maker of a note payable to a married woman question her capacity to indorse. — *McIver v. Dennison*, (1859), 18 U. C. Q. B. 619. Cp. *Park v. Pullishy*, (1911), 16 West. L. R. 467. See notes to § 47, *supra*.

**Forgery. Estoppel. Ratification. Recovery of amount paid on forged cheque. Default of notice. 49.** Subject to the provisions of this Act, where a signature on a bill is forged, or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority. Provided that: a) Nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery; b) If a cheque payable to order is paid by the drawee upon a forged endorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of action against the drawee for the recovery back of the amount so paid, nor any defence to any claim made by the drawee for the amount so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery. 2. In case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party thereto or named therein, who has not previously instituted proceedings for the protection of his rights.

Imp. §§ 24, 60. An indorsement by one not the legal holder of a note, e. g., one in possession under a forged indorsement, is inoperative and transfers no rights in the note even to an innocent purchaser for value before maturity. — *Larue v. Evanture*, (1866), 2 L. C. L. J. 112. Similarly, an indorsement by the payee of a note after title to the instrument has been vested by operation of law in his assignee in insolvency, is inoperative. — *Jenks v. Doran*, (1880), 5 O. A. R. 558. One in possession of a cheque under a forged indorsement, who collects it from the



drawee bank, is liable to the legal holder for conversion. — *Meyers v. Bank*, (1909), 13 O. W. R. 533.

**Ratification.** — Unless a forgery by the alteration or false signing of a bill or note be committed under such circumstances as to lead the person to whom it is altered reasonably to believe that the forger in making the alteration or signature is acting on behalf of the person whose instrument or name is forged, the forgery may not be ratified. — *Westloh v. Brown*, (1878), 43 U. C. Q. B. 402; *Merchants Bank v. Lucas*, (1889), 15 O. A. R. 573, aff'd (1890), 18 S. C. R. 704. But the mere fact that the making of the alteration or signature is criminal does not prevent a ratification, if the forgery was committed by one ostensibly acting for the person whose instrument or name was forged. — *Scott v. Bank*, (1894), 23 S. C. R. 277. In *Westloh v. Brown*, *supra*, the maker of a note which had been irregularly indorsed for his accommodation by the defendant, in the presence of the plaintiff, the payee, to whom the note was to be delivered for an advance to the maker, altered the date of payment. The maker did not "profess to act, in making the alteration, for the defendant." It was held that the defendant could not ratify. In *Merchants Bank v. Lucas*, *supra*, the manager of the defendants' business forged the signatures of the defendants to a bill of exchange as drawers and indorsers, and discounted the instrument at the defendants' bankers. It was held that the act of the forger in signing the defendants' name to the bill was incapable of ratification. *Burton, J. A.*, said: "Notwithstanding the doubts that have been expressed I take it to be clear, both upon principle and authority, that there can be no ratification of a forged instrument, an essential element in all cases of ratification being wanting, viz., that the act ratified was one assumed or pretended to have been done for or under the authority or the party sought to be charged." (p. 581.) In *Scott v. Bank*, *supra*, X. forged the plaintiff's signature on the back of a non-negotiable deposit receipt of the defendant bank payable to plaintiff and received the money due upon it. Three years later the plaintiff upon learning of X.'s misconduct took from him a mortgage to secure his obligation to account to the plaintiff for the money thus misappropriated. Two years later, after X. had absconded, the plaintiff brought action against defendant to recover the amount of the deposit receipt. On the ground that the presentment for payment of the non-negotiable receipt by X. in itself amounted to a representation that he was acting as agent for the plaintiff in demanding and receiving the money, it was held that the taking of security from X. was a ratification by the plaintiff and that he could not recover. The Court said (pp. 281—282): "The receipt was not a negotiable instrument and although the fabricated indorsement might be by statute a forgery yet, even if genuine, it would of itself have constituted no authority to the bank to pay the money to Robinson as being himself entitled to the money as the transferee of the appellant, but the receipt with the appellant's name written on the back was used by Robinson in such a way as to indicate to the bank that he had authority from the appellant to demand payment of the money specified in it; Robinson's conduct was therefore equivalent to a distinct verbal representation of his authority to receive the money and to deal with the receipt as he did. The case before us is therefore the case of a pretended agent obtaining the payment of money belonging to his assumed principal by false representations and pretences as to his authority made to the debtor of the latter. Then I think the law is clear that if the payment of money is obtained from a debtor by one falsely representing to the debtor that he is the agent of his creditor, from whom he in fact has no authority, and thereby a fraud upon the debtor is committed, yet if the creditor afterwards ratifies and confirms the payment so made he thereby adopts the agency of the party who has received the money and it becomes equivalent to a payment made by the debtor to a person having proper authority to receive it. And it makes no difference in the application of this principle that by his false pretences the party receiving the money has committed an indictable offence." For instances of the ratification of unauthorized but not forged signatures see: *Morrison v. Spur*, (1856), 8 N. B. 288; *Ryan v. Terminal Co.*, (1893), 25 N. S. 131.

**Estoppel.** — If one, whose signature to a bill or note has been signed without authority or forged, by his conduct or verbal representations leads another reasonably to believe that the signature is genuine or was authorized and to act on that belief to his detriment, the former is estopped from denying the binding effect of the signature. — *Pratt v. Drake*, (1858), 17 U. C. Q. B. 27; *Union Bank v. Farnsworth*, (1886), 19 N. S. 82; *Merchants Bank v. Lucas*, (1889), 15 O. A. R. 573, aff'd (1890), 18 S. C. R. 704; *Ewing v. Bank*, (1904), 35 S. C. R. 133; *Bank of Montreal v. The King*, (1906), 38 S. C. R. 258; *Pickup v. Bank*, (1908), 9 West. L. R. 173; *Shaw v. Connell*, (1909), 7 East. L. R. 165; *Woosnam v. Bank*, (1911), 17 West. L. R. 40. See *Soc. Perm. de Constr. d'Iberville v. Longtin*, (1911), 17 Rev. de Leg. (N. S.) 236. See also *Agricultural Association v. Bank*, (1881), 6 O. A. R. 192. The Crown, however, may not be estopped by the representation of its officers. — *Bank of Montreal v. The King*, (1906), 38 S. C. R. 258. The plaintiff's refraining from proceeding against the forger until he has absconded, is a sufficient reliance upon the defendant's representations to estop the defendant. — *Pratt v. Drake*, *supra*; *Union Bank v. Farnsworth*, *supra*. But if the defendant repudiates the signature before the plaintiff has acted to his prejudice upon the representation as to its validity, e. g., before the forger has absconded, the defendant is not estopped. — *Merchants Bank v. Lucas*, *supra*. Nor is the defendant estopped from denying his representations if the plaintiff's reliance has not in fact prejudiced him, e. g., when the plaintiff still has recourse on the bill or note against other solvent parties to it. — *Shaw v. Connell*, *supra*. Silence on the part of the defendant when informed by the plaintiff that he holds a note of the defendant's which the defendant knows to be a forgery is a representation of the validity of the signature if the defendant is under a duty to speak; and a

business man is under such a duty when notified by a bank that his note falls due at the bank and he is looked to for payment. — *Ewing v. Bank, supra*; *Pickup v. Bank, supra*. But see *Soc. Perm. de Constr. d'Iberville v. Longtin, supra*. In *Ewing v. Bank, W.* forged the defendants' names as makers to a note for \$ 2000 and discounted it at the plaintiff bank at Toronto on August 15. The proceeds were placed to the credit of W. and the defendants received notice from the plaintiff on the 16th that their note fell due at the plaintiff bank on December 17, and that they were looked to for payment. At the close of business on the 16th W. had to his credit at the plaintiff bank \$ 1355; at the close of business on the 17th, \$ 84. The defendants knew that the note described in the notice was a forgery and at once communicated with W., from whom they received an answer at 6 P. M. of the 16th confirming their knowledge of that fact. The defendants repeatedly urged W. to take up the note but did not notify the bank of the forgery of their signatures until a few days before the maturity of the note. It was held that the defendants' silence on the 16th, i. e., their failure to notify the plaintiff of the forgery by telephone or telegraph on that day, amounted to a representation of the validity of the note, which induced the plaintiff bank to allow that part of the proceeds of the discount remaining on deposit at the close of business on the 16th to be withdrawn by W., and that in consequence the defendants were estopped from denying its validity and were liable to the plaintiff bank for the face value of the note. Killam, J., said (pp. 165—166): "For the reasons so well stated by Mr. Justice Osler the case appears to me to come directly within the principle upon which silence under certain circumstances gives rise to an estoppel. It was not a case in which the defendants had merely learned of the existence of a note on which their signature had been placed without authority, and had cause to apprehend only that some unknown person might possibly advance money without notice of the falsity of the signature, which is the case put in Mr. Bigelow's work. The bank directly notified them that their note would fall due at its office on a certain date and requested them to provide for the same. This distinctly implied that the bank had an interest, either of its own or on behalf of some one else, in the payment of the note and in its genuineness. While there was no intimation that the bank had acquired or was proposing to acquire the note for value, the defendants, as men of business, would know that the bank might have discounted the note and have the proceeds still at the customer's credit, or that it might make advances upon it. They would know that an immediate repudiation would enable the bank to withhold payment of any portion of the proceeds not actually paid out or of any sums not already advanced. They knew that they had made no such note, that they had given no authority for the signature. They could at once repudiate it, and they did so in their telegram to Mr. Wallace. No further information was necessary for that purpose. While the bank manager placed the proceeds to the credit of the customer without inquiry, and took no precaution against their being paid out before he could hear from the defendants, the bank did act upon the defendants' silence in the sense that it did what, it should properly be inferred, it would not have done if the defendants had at once denied the signature; it allowed the balance of the proceeds to be withdrawn." The acknowledgment by a depositor of the correctness of a statement of his account rendered to him by his bank does not estop him from denying the validity of forged cheques charged against his account, if his acknowledgment was procured by the fraud of the clerk who had perpetrated the forgeries. — *Bank of Montreal v. The King*, (1906), 38 S. C. R. 258. The signing by the plaintiff of the defendant bank's voucher book confirming his account with a forged cheque charged against it, does not by itself amount to a representation that the forged cheque is genuine, if the plaintiff has not examined, or had a reasonable opportunity to examine, the cancelled cheques returned to him at the time he signed the voucher book. — *Woosnam v. Bank*, (1911), 17 West. L. R. 40. But the payment by the drawee bank of cheques to which the drawer's signature is forged is a representation of their validity; and if the bank to which the payment was made relies upon the representation by allowing its customer to withdraw the proceeds of the forged cheques, the drawee bank is estopped. — Per Davies and Idington, JJ., in *Bank of Montreal v. The King, supra*.

**Recovery of amount paid on forged endorsement. Rights over. Notice of forgery.**

50. If a bill bearing a forged or unauthorized endorsement is paid in good faith and in the ordinary course of business, by or on behalf of the drawee or acceptor, the person by whom or on whose behalf such payment is made shall have the right to recover the amount so paid from the person to whom it was so paid or from any endorser who has endorsed the bill subsequently to the forged or unauthorized endorsement if notice of the endorsement being a forged or unauthorized endorsement is given to each such subsequent endorser within the time and in the manner in this section mentioned. 2. Any such person or endorser from whom said amount has been recovered shall have the like right of recovery against any prior endorser subsequent to the forged or unauthorized endorsement. 3. Such notice of the endorsement being a forged or unauthorized endorsement shall be given within a reasonable time after the person seeking to recover the amount has acquired notice that the endorsement is forged or unauthorized, and may be given in the same manner, and if sent by post may be addressed in the same way, as notice of protest or dishonour of a bill may be given or addressed under this Act.

Imp. § 60. For the history of this section, see 4 *Journal of the Canadian Bankers Association*, 22. See notes to § 49, *supra*.



**Procuration signatures. 51.** A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signature only if the agent in so signing was acting within the actual limits of his authority.

Imp. § 25. When an agent signs a negotiable instrument, whether as drawer, maker, acceptor, or indorser, *per procurationem*, or *per pro*; or in any other manner indicating that he is signing for and on behalf of a principal, all persons dealing with the instrument are charged with knowledge either of the contents of the power of attorney under which he is acting or of the actual limits of his authority. — *Currier v. Ottawa Gas Co.*, (1868), 18 U. C. C. P. 202; *Banque du Peuple v. Bryant*, (1891), 17 Q. L. R. 103, *aff'd* (1893) A. C. 170; *Molson's Bank v. Cooke*, (1905), Q. R. 27 S. C. 130; *Vigaud v. De Wertheimer*, (1909), 6 East. L. R. 173. When a note is signed *per pro*, proof of the due execution of the power of attorney under which the agent was acting must be made by the plaintiff to entitle him to judgment in an *ex parte* suit on the note. — *Etheir v. Thomas*, (1870), 15 L. C. Jur. 225. Even if the signature is not *per pro*, if the payee knows that the agent who made the signature is acting under a power of attorney he is charged with knowledge of its contents. — *St. Jean v. Bank*, (1876), 21 L. C. Jur. 207. But the fact that the power of attorney under which an agent making a *per pro* signature is acting, does not authorize the signature, does not preclude the plaintiff from proving that the agent was in fact authorized to sign. — *Cooper v. Blacklock*, (1880), 5 O. A. R. 535. But see *St. Jean v. Bank*, *supra*. If the power of attorney under which the agent making a *per pro* signature is acting, restricts the authority of the agent to the indorsing of negotiable instruments for the benefit of a deceased's estate, the executors of which are his principals, one discounting a note indorsed *per pro* by the agent, for one of the executors, with knowledge that the discount is for his personal benefit, cannot recover on the note against the other executors. — *Gore Bank v. Crooks*, (1867), 26 U. C. Q. B 251. But if the *per pro* signature is made under circumstances which apparently bring it within the terms of the power of attorney under which the agent is acting, the bill or note is enforceable against the principal by a holder in due course, even though the signature was in fact a fraud upon the principal. — *Bryant v. Bank*, (1891), 17 Q. L. R. 78, *aff'd*, (1893) A. C. 170, 179. In the Privy Council it was said: "The law appears to their Lordships to be very well stated in the Court of Appeal of the State of New York, in *President, etc.*, of the *Westfield Bank v. Cornen*, (37 N. Y. 320), cited by *Andrews, J.*, in his judgment in another case brought by the *Quebec bank* against the company. The passage referred to is as follows: 'Whenever the very act of the agent is authorized by the terms of the power, that is, whenever by comparing the act done by the agent with the words of the power, the act is in itself warranted by the terms used, such act is binding on the constituent, as to all persons dealing in good faith with the agent; such persons are not bound to inquire into facts aliunde. The apparent authority is the real authority.'" See also *Banque d'Hochelaga v. Jodoin*, (1895) A. C. 612. Though the purchaser of a note signed for the maker *per pro* cannot recover upon it because of his constructive knowledge that the agent has exceeded the actual limits of his authority, he may recover against the maker, the principal, in an action for money had and received, if the proceeds of the note were in fact applied by the purchaser to the use of the maker. — *Molsons' Bank v. Brockville*, (1880), 31 U. C. C. P. 174. However, if an agent beyond the scope of his authority indorses *per pro* an accepted cheque payable to his principal and receives the proceeds from the bank on which the cheque was drawn, the payment by the agent of the proceeds thus wrongfully acquired to the principal on account of his debt to the principal, does not preclude the principal from recovering on the cheque against the bank. *Semble*, such a payment does not constitute an application by the bank of the proceeds to the use of the principal, and the latter, having received the money innocently and for value, may retain it. — *Canadian Pacific Ry. Co. v. Bank*, (1908), 5 East. L. R. 569.

**Signing in representative capacity. Rule for determining capacity. 52.** Where a person signs a bill as drawer, endorser, or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability. 2. In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

Imp. § 26. A bill signed "J. McC. and Bros., Agts.," and delivered by that firm as agents for an undisclosed principal to the plaintiff, the payee, is a bill of which J. McC. & Bros. are the drawers. — *Reid v. McChesney*, (1858), 8 U. C. C. P. 15. A note signed "J., Attorney," and delivered to the plaintiff on account of a debt owed by J.'s principals, is the note of J. — *Hamilton v. Jones*, (1896), Q. R. 10 S. C. 496. So a cheque the drawer of which appended to his signature the words "In trust", is the cheque of him who signed as drawer. — *Royal Bank v. Douglas*, (1908), 14 Rev. de Leg. (N. S.) 132. Cp. *Brown v. Howland*, (1885), 9 O. R. 48, *aff'd*, (1887), 15 O. A. R. 750. A note reading "We promise," signed G. H. C., Pres. Gr. Tel. Co." and "F. A. W., Sec'y Gr. T. Tel. Co.," and bearing the corporate seal of the company, of the circumstances surrounding the inception of which there was no evidence, is not the note of G. H. C. and F. A. W. *Semble*, that is the note of the company. — *City Bank v. Cheney*, (1857), 15

U. C. Q. B. 400. *Cp. Union Bank of Canada v. Cross*, (1909), 12 West. L. R. 539, 544, 545. A note reading "I promise," etc., "value received by the O. F. Ins. Co." and signed "C. H. G., Sec'y O. F. Co.," which appears to have been delivered on the understanding that the company only was to be liable upon it, of which understanding, the plaintiff, a purchaser after maturity, had constructive notice, is the note of C. H. G. — *Armour v. Gates*, (1858), 8 U. C. C. P. 548. A bill of exchange with the marginal heading "No. 9. — N. & D. Rs. Ry. Co." and signed "W. L. S., Sec'y of the N. & D. Rs. Ry. Co.," which appears to have been delivered to the payee on account of a debt of the company, of which circumstance, however, the plaintiff, an indorser, had no knowledge, and which was not executed in the statutory form prescribed for the execution by the company of negotiable instruments, is a bill of which W. L. S. is the drawer. — *Bank of Montreal v. Smart*, (1860), 10 U. C. C. P. 15. A bill of exchange drawn by an insurance company, ordering the payment of \$ 875 being payment in full of his claim under Policy No. 71,514," and signed by "A. S., Inspector," which appears from the evidence of the circumstances surrounding its inception to have been delivered and accepted by the plaintiff, the payee, as the instrument of the insurance company, is a bill of which A. S. is the drawer. *Semble*, that had there been an express collateral agreement between the plaintiff and A. S., that the latter should not be held liable, such an agreement would not be an equitable defence. — *Hagarty v. Squier*, (1877), 42 U. C. Q. B. 165. A note reading "we promise" and signed "W. D. R., Man. O. T. L. Co.," which appears from evidence of the circumstances surrounding its inception, known to the plaintiff, an indorser, to have been delivered for and accepted as the obligation of the O. T. L. Co., is the note of the members of that association or partnership. Query, whether it might not also be treated as the note of W. D. R. — *Fairchild v. Ferguson*, (1892), 21 S. C. R. 484. A note reading "we promise" and signed "A. G. E., Pres. G. P. Co." and issued under circumstances similar to those in *Fairchild v. Ferguson*, *supra*, is the note of the G. P. Co. — *Canada Paper Co., v. Gazette Pub. Co.*, (1893), 32 N. B. 689. *Contra*, *Canada Pub. Co. v. Gazette Pub. Co.* (1893), 32 N. B. 685, overruled. A note reading "we promise" and signed "A. B. Co. Ltd.," "W. M. C., Mgr." and "F. C. E." which appears from evidence of the circumstances surrounding its inception to have been delivered to the plaintiff, the payee, as the joint and several note of the company, W. M. C., and F. C. E., is the joint and several note of those three parties, whether the face of the note alone be regarded or the instrument be construed in the light of the extrinsic evidence. Query, as to whether extrinsic evidence may be looked to in determining the effect of the note. — *Union Bank v. Cross*, (1909), 12 West. L. R. 539. The signature "Eastwood & Co., per J. Eastwood, Jr.," indorsed on a note, imports that J. E. signed for the firm and not as one of the firm. — *Dowling v. Eastwood*, (1846), 3 U. C. Q. B. 376. The signature "J. M. B., agents of the executors of the late E.," indorsed on a note, is sufficient in form to bind the executors as indorsers. — *Pres., etc., Gore Bank v. Crooks*, (1867), 26 U. C. Q. B. 251. *Cp. cases in note to § 35, supra.*

#### *Consideration.*

**Valuable. Sufficiency. Antecedent debt. Form of bill. 53.** Valuable consideration for a bill may be constituted by: a) Any consideration sufficient to support a simple contract; b) An antecedent debt or liability. 2. Such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time.

*Imp. § 27. Consideration.* — A note delivered by the maker to the payee as a gift is generally assumed to be unenforceable by the payee because of the absence of consideration. — *Poulton v. Dalnidge*, (1850), 6 U. C. Q. B. 277; *McCarroll v. Reardon*, (1859), 9 N. B. 261; *Baker v. Read*, (1868), 7 N. S. 199; *Thomas v. McLeod*, (1869), 12 N. B. 588; *Re Williams*, (1896), 27 O. R. 405. But see *Hammond v. Small*, (1858), 16 U. C. Q. B. 371, 377; *Colville v. Flanagan*, (1864), 8 L. C. Jur. 225; *Molleur v. Roy*, (1887), 31 L. C. Jur. 99. A note not intended as a gift and based on no consideration is not enforceable by the payee against the maker. — *Forsyth v. Forsyth*, (1880), 13 N. S. 380; *Cossitt v. Cook*, (1884), 17 N. S. 84; *Ryan v. McKerral*, (1888), 15 O. R. 460. A note delivered by the maker to the payee not as a gift but in exchange for a forbearance which it is erroneously believed the promisee is entitled to withhold, or for a promise believed to be binding, or for a void obligation which is believed to be valid, is not, because of the mistake, enforceable by the payee. — *Ireland v. Guess*, (1846), 3 U. C. Q. B. 220; *Black v. Gesner*, (1847), 3 N. S. 157; *City v. Lucas*, (1857), 8 N. B. 583; *McDaniel v. McMillan*, (1876), 11 N. S. 405; *Riel v. McEwen*, (1881), *Rams. App.* 82; *Assurance Co. v. Le May*, (1896), Q. R. 12 S. C. 232. So a note delivered by a debtor through mistake to a person not his creditor, e. g., to a new firm instead of to the old firm to which he was indebted, is not, because of the mistake, enforceable. — *Henault v. Thomas*, (1868), 1 Rev. Leg. 706. But bills of exchange and promissory notes given for an act, forbearance, or promise which would be a sufficient consideration to support a parol promise are enforceable by the payee against the maker, acceptor, or drawer. Thus, the personal note of an officer of an insurance company delivered to the payee in exchange for the surrender and cancellation of the latter's policy of insurance, is enforceable by the payee. — *Armour v. Gates*, (1859), 8 U. C. C. P. 548. A note delivered by the maker to the payee to indemnify the latter upon his becoming a surety for the maker is enforceable by the payee. — *Perry v. Milne*, (1861), 5 L. C. Jur. 121. A note delivered by the maker to the payee for the latter's forbearance or promise of forbearance from a suit is enforceable by the payee. — *Lyons v. Donkin*, (1891), 23 N. S. 258; *Creelman v. Stewart*, (1896), 28 N. S. 185;



McGregor v. McKenzie, (1897), 30 N. S. 214. A note delivered by the maker to the payee in exchange for the latter's promise to pay money to a third person on account of the maker, is enforceable by the payee. — Ruffee v. Shaw, (1901), 7 East. L. R. 17. A note delivered by the maker to the payee in extinguishment of the former's liability to the latter, whether in tort or in contract, is enforceable by the payee. — Hubley v. Morash, (1894), 27 N. S. 281; Ruffee v. Shaw, *supra*. An indorsement for the maker's accommodation given in exchange for the payee's advancing money to the maker by way of overdraft, or the payee's discounting of the paper of third persons, is enforceable by the payee. — Cox v. Bank, (1911), 16 West. L. R. 512; Knechtel Co. v. Ideal Co., (1909), 11 West. L. R. 344. As in the case of a parol promise, a note delivered to the payee on account of a debt of the maker's barred by a discharge in bankruptcy or the statute of limitations, is said to be based upon a moral consideration and is enforceable by the payee. — Austin v. Gordon, (1872), 32 U. C. Q. B. 621; Wright v. Wright, (1876), 6 O. P. R. 295. Again, as in the case of so-called subscription contracts, a note delivered by the maker to the payee, the treasurer of a committee which was soliciting subscriptions to raise a fund to support a bishop, is, it seems, enforceable by the payee. — Hammond v. Small, (1858), 16 U. C. Q. B. 371. And a note delivered by the maker to the payee as part of a family settlement or arrangement is enforceable by the payee. — Power v. Power, (1909), 6 East. L. R. 498. *Semble*, that a note delivered by the maker to the payee for a forbearance on the part of the payee from suing the maker on a cause of action honestly believed to exist, whether or not the cause of action exists or the belief in its existence is reasonable, is enforceable by the payee. — Power v. Power, *supra*. A bill, note, or cheque drawn or indorsed by a debtor and received by his creditor on account of a pre-existing debt then due operates as conditional payment of the debt unless by agreement it is received in absolute payment or extinguishment. — Carruthers v. Ardagh (1873), 20 Grant, 579; Jones v. Lemesurier, (1840), 2 Rev. de Leg. 317; Beaudoin v. Dalmasse, (1857), 7 L. C. R. 47; Brown v. Mailloux, (1859), 9 L. C. R. 252; Noad v. Bouchard, (1860), 10 L. C. R. 476; Noad v. Lampson, (1860), 11 L. C. R. 29; Rogers v. Morris, (1869), 13 L. C. Jur. 20; Richard v. Boisvert, (1871), 3 Rev. Leg. 7; Watts v. Robinson, (1872), 32 U. C. Q. B. 362; Mercier v. Bousquet, (1874), 5 Rev. Leg. 352; Hughes v. Canada, etc. Society, (1876), 39 U. C. Q. B. 221; Murray v. Gastonguay, (1880), 13 N. S. 319; *In re Ives*, (1887), 7 C. L. T. 146; Kingsey Falls v. Quesnel, (1888), 19 Rev. Leg. 470; Stephenson v. Miller, (1888), 27 N. B. 42; Landry v. Beauchamp, (1890), 13 Leg. News, 169; Pelletier v. Raymond, (1894), 1 Rev. de Jur. 13; Patterson v. McDougall Co., (1894), 26 N. S. 209; Re Solicitors, (1909), 13 O. W. R. 680. But see Lyman v. Chamard, (1857), 1 L. C. Jur. 285; Brown v. Harris, (1879), 13 N. S. 13. The suspension of the payee's rights on the debt, which results when the note is received in conditional payment of it, is said to be the consideration for a note so delivered, and the payee may enforce it against the maker. — Bank v. Bartlett, (1862), 12 U. C. C. P. 238; Gates v. Crooks, (1831) Dra. 446; See also Gooderham v. Hutchison, (1855), 5 U. C. C. P. 241; Hillis v. Templeton, (1861), 7 U. C. L. J. 301; Evans v. Morley, (1862), 21 U. C. Q. B. 547. But see Fiske v. Meehan, (1876), 40 U. C. Q. B. 146, 156. A note delivered by the maker to the payee on account of a pre-existing debt of a third person to the payee which matures before the debt becomes due, in the absence of an express agreement to forbear suit on the debt, is said not to be given for a consideration and is not enforceable by the payee. — McGillivray v. Keefer, (1847), 4 U. C. Q. B. 456. *Contra*, Dickenson v. Clemow, (1850) 7 U. C. Q. B. 421; Blake v. Walsh, (1870), 29 U. C. Q. B. 541, 547. *Semble*, a demand note delivered by the maker to the payee on account of a pre-existing debt of a third person then due to the payee, in the absence of an express agreement to forbear, is for the same reason held not to be enforceable by the payee. — Merchants' Bank v. Robinson, (1879), 8 O. P. R. 117. Cp. Lemieux v. Bourassa, (1881), 1 Dorion, 305. As to the necessity of a consideration for a bill or note in Quebec, Maclaren says: "In the French law the word 'cause,' which takes the place of the English 'consideration,' has a wider meaning, and includes natural or moral obligations: Pothier on Obligations, Nos. 42, 43; Code Napoleon, Arts. 1108, 1131; 16 Laurent, 107—111; 24 Demolombe, p. 329. A mere moral obligation is not a sufficient consideration for a bill or note in England: Eastwood v. Kenyon, 11 A. & E. 438 (1840); but may be in Quebec: Lockerby v. O'Hara, M. L. R. 7 S. C. 35 (1890); Bédard v. Chaput, Q. R. 15 S. C. 572 (1899); Brulé v. Brulé, Q. R. 26 S. C. 17 (1904). The meaning of 'sans cause' seems in the French law to be confined to what in English law would be called total failure of consideration as distinguished from mere absence of consideration: 16 Laurent, 111—119; 24 Demolombe, p. 342. The Civil Code of Lower Canada has introduced the English 'consideration' as a synonym for the French 'cause.' One of the requisites to the validity of a contract is, 'a lawful cause or consideration': C. C. Art. 984. 'A contract without a consideration or with an unlawful consideration has no effect': C. C. Art. 989. The Privy Council has held in a case from Quebec that there is no difference between French law and English law as to the necessity for a valuable consideration for the validity of a contract: McGreevy v. Russell, 56 L. T. N. S. 501 (1887)." — Maclaren, *Bills, notes, and cheques*, pp. 164—165.

*Failure of consideration.* — A complete failure of consideration is a defence against a plaintiff not a holder in due course. — Gamsby v. Chapman, (1862), 13 L. C. R. 239; Marchand v. Wilkes, (1880) 3 Leg. News, 318; Almour v. Cable, (1886), Rams. App. 87; Bullion Co. v. Cartwright, (1905), 5 O. W. R. 522, s. c. 6 O. W. R. 505; Davis v. Reynolds, (1909), 11 West. L. R. 288. See also Merchants' Bank v. Thompson (1911), 18 O. W. R. 582. As to partial failure of consideration, Maclaren says: "When the consideration for a note has only partially failed,

the question as to how far it may be set up as a defence, is largely a question of pleading. Formerly it would not be allowed in England or Provinces where the old English rules of pleading were followed. Now in England and Ontario it may be set up as a defence pro tanto as between the original parties, or between those who are in the same position, provided the failure be for a definite sum clearly ascertained." — *Maclaren, Bills, notes and cheques*, p. 173, citing *O'Brien v. Ficht*, (1859), 18 U. C. Q. B. 241; *Lalonde v. Rolland*, (1864), 10 L. C. Jur. 321; *Fisher v. Archibald*, (1871), 8 N. S. 298; *Barber v. Morton*, (1882), 7 O. A. R. 114; *Star Co., v. Greenwood*, (1884), 5 O. R. 28. See also *Laprés v. Massé*, (1901), Q. R. 19 S. C. 275; *Topping v. Marling*, (1910), 13 West. L. R. 319. See also *Rennie v. Jarris*, (1850), 6 U. C. Q. B. 329.

**Value.** — The value which must be parted with by the indorsee or bearer of a bill of exchange or promissory note in order to constitute him a holder for value, is defined by § 2, *supra*, to mean valuable consideration. For examples of what is a consideration, see *supra*. The making of a note for accommodation constitutes the accommodation maker the holder for value of bills or notes transferred to him upon his making the accommodation note as collateral security for his right to indemnity against the person for whose accommodation he signed. — *Wood v. Shaw*, (1858), 3 L. C. Jur. 169. A bank which credits to his account the face value of a cheque deposited by a customer whose account is overdrawn, is a holder for value of the cheque so deposited, and may recover against the drawer, who drew for the customer's accommodation, the face of the cheque, although the cheque is for double the amount of the overdraft. Query, whether in equity the accommodation drawer may not be entitled to recover back from the bank, the difference between the face of the cheque and the amount of the overdraft. — *Bank v. Warren*, (1909), 19 O. L. R. 257. But a bank which receives a note for collection is not a holder for value of it. — *Bank v. McComb*, (1911), 16 West. L. R. 204. One to whom a note payable after date is transferred by the holder in conditional payment of the latter's pre-existing debt is a holder for value of the instrument. — *Gooderham v. Hutchison*, (1855), 5 U. C. C. P. 241; *Hillis v. Templeton*, (1861), 7 U. C. L. J. 301; *Evans v. Morley*, (1862), 21 U. C. Q. B. 547. Cp. *Greenwood v. Perry*, (1869), 19 U. C. C. P. 403. And one to whom a note payable after date is transferred by the holder as collateral security for a pre-existing debt of the latter's then due, is a holder for value of the note. — *Canadian Bank v. Gurley*, (1880), 30 U. C. C. P. 583; *Blake v. Walsh*, (1870), 29 U. C. Q. B. 541. *Contra*, *Cox v. Canadian Bank*, (1911), 16 West. L. R. 512, *semble*. But one to whom a note is transferred by the holder as collateral security for a pre-existing debt of the latter's not yet due, is not a holder for value of the note. — *Canadian Bank v. Wait*, (1907), 7 West. L. R. 255. See also *Johnson v. Macrae*, (1911), 17 West. L. R. 132. *Contra*, *Blake v. Walsh*, (1870), 29 U. C. Q. B. 541, 547, *semble*. Cp. *Bank v. McComb*, (1911), 16 West. L. R. 204.

**Holder for value. In case of lien. 54.** Where value has, at any time, been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time. 2. Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

**Imp. § 27.** One to whom bills or notes are transferred as collateral security is a holder for value. — *Canadian Bank v. Gurley*, (1880), 30 U. C. C. P. 583; *Blake v. Walsh*, (1870), 29 U. C. Q. B. 541. See also *Exchange Bank v. Normand*, (1884), 13 Rev. de Leg. 59. But, in order to avoid circuity of action, one who takes as collateral security from the payee a note made for the latter's accommodation may recover from the maker only the amount of the debt for which he holds the note as security. — *Strathy v. Nicholls*, (1844), 1 U. C. Q. B. 32. *Contra*, *Muir v. Cameron*, (1852), 10 U. C. Q. B. 356, *semble*. Cp. *Bank v. Warren*, (1909), 19 O. L. R. 257, 266. However, the holder of a note who has parted with no value is entitled to recover the full amount due upon the instrument if his transferrer or any prior holder was a holder for value. — *Wood v. Ross*, (1859), 8 U. C. C. P. 299. See also *Muir v. Cameron*, (1852), 10 U. C. Q. B. 356; *Miller v. Ferrier*, (1850), 7 U. C. Q. B. 540. Consequently, if the pledgor was a holder for value, the pledgee, whatever the amount of the debt for which he holds the instrument as security may be, may recover the full amount due upon it, holding the balance over and above that necessary to pay the debt, as trustee for the pledgor. — *Russell on Bills*, pp. 193, 194; *Maclaren, Bills, notes and cheques*, p. 176; *Merchant's Bank v. Thompson*, (1910), 16 O. W. R. 770, *rvd.* on another point, (1911), 18 O. W. R. 582. See also *Hutchins v. Cohen*, (1869), 14 L. C. Jur. 85; *Canadian Bank v. Woodward*, (1883), 8 O. A. R. 347; *Vezina v. Maltais*, (1904), 10 Rev. de Jur. 301; *Wade v. Livingston*, (1909), 13 O. W. R. 708, s. c. (1910), 15 O. W. R. 224, (1909) 14 O. W. R. 549.

**Accommodation bill. Liability of party. 55.** An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or endorser, without receiving value therefor, and for the purpose of lending his name to some other person. 2. An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

**Imp. § 28.** An acceptance, drawing, making, or indorsement of a bill or note is for "accommodation" when the acceptor, drawer, maker, or indorser has a right to be indemnified in respect of the liability he has assumed upon the instrument. The definition contained in this section



is erroneous and misleading, since an accommodation party always receives a consideration or value for entering into his obligation on the bill or note in the promise of the accommodated party to indemnify him. Furthermore, this section seems unwittingly to have effected an unfortunate and apparently unforeseen change in the law, by restricting recovery against an accommodation party to a holder for value. For obvious reasons, if the holder is the person bound to indemnify, he may not maintain an action on the bill or note against the party whom he is bound to indemnify. But if the holder is not the indemnifier, he could at least before the enactment of this section recover on the instrument even though he was not a holder for value. Thus, if M. made and delivered his note to P. in exchange for A.'s promise to indemnify M., the latter, having received A.'s promise of indemnity as consideration for the making of the note, was held liable to P., although P. was not a holder for value. — *Muir v. Cameron*, (1852), 10 U. C. Q. B. 356; *Miller v. Ferrier*, (1850), 7 U. C. Q. B. 540. See also *Mair v. McLean*, (1841), 1 U. C. Q. B. 455. It is true that if the party accommodated diverts the bill or note from the purpose for which it was executed and delivered to him, such a breach of trust will be a defence to the accommodation party against a holder not a holder in due course, or even will entitle him to recover the instrument from one not a holder in due course. — *Cox v. Canadian Bank*, (1911), 16 West. L. R. 512. But in such a case it is the diversion, or breach of trust, which constitutes the defence and not the fact *per se* that the instrument was signed for accommodation. Thus, notice of the accommodation character of the instrument is not notice of a "defence" and does not deprive a holder of the position of a holder in due course and the right to recover against the accommodation party. — *Miller v. Ferrier*, (1850), 7 U. C. Q. B. 540; *Elder v. Kelly*, (1850), 8 U. C. Q. B. 240; *Beique v. Bury*, (1880), 3 Leg. News, 160; *Scott v. Quebec*, (1884), 7 Leg. News, 343. And the allegation or proof by the defendant of the fact that he signed for accommodation does not, as in the case of a "defence," oblige the plaintiff to allege or prove that he is a holder in due course. — *Miller v. Ferrier*, *supra*; *Muir v. Cameron*, (1852), 10 U. C. Q. B. 356; *Merchant's Bank v. Coal Co.*, (1894), 16 O. P. R. 87. An accommodation party is liable to the holder in accordance with the nature of the obligation assumed by him in becoming a party to the bill or note, whether the obligation is that of acceptor, maker, drawer, or indorser. Thus, if he is an indorser or drawer his obligation, like that of any indorser or drawer, is conditional upon due presentment and proceedings upon dishonour; but if he is a maker or acceptor, he is not entitled to presentment and notice of dishonour. — *Gardner v. Shaver*, (1893), 13 C. L. T. 287; *Wilson v. Brown*, (1881), 6 O. A. R. 87. But see *Hough v. Kennedy*, (1910), 13 West. L. R. 674. However, an accommodation party is a surety for the party accommodated, and is entitled to the defences of a surety as against a holder who has notice, whether the holder had notice at the time of the negotiation of the bill or note to him or received it subsequent to the transfer. — *Allison v. McDonald*, (1894), 23 S. C. R. 635. *Contra*, *City Bank v. Murdock*, (1861), 11 U. C. C. P. 138. Thus, an accommodation party, like other sureties, is discharged by a contract between his principal, the accommodated party, and the holder, extending the time of payment. — *Bank v. Ockermann*, (1865), 15 U. C. C. P. 363; *Devanney v. Brownlee*, (1883), 8 O. A. R. 355; *Healey v. Dolson*, (1885), 8 O. R. 691; *O'Brien v. Semple*, (1887), M. L. R. 3 Q. B. 55; *Ryan v. McKerrall*, (1888), 15 O. R. 460; *Bank v. McKay*, (1888), 15 S. C. R. 672; *Le Jeune v. Sparrow*, (1893), 1 Terr. L. R. 384; *Leet v. Blumenthal*, (1898), Q. R. 13 S. C. 250; *Bank v. Arnoldi*, (1901), 2 O. L. R. 624; *Wade v. Livingston*, (1909), 13 O. W. R. 708, s. c. (1909), 14 O. W. R. 549, (1910), 15 O. W. R. 224. See also *Lytell v. Foell*, (1909), 13 O. W. R. 738; *Edwards v. Stone*, (1909), 14 O. W. R. 644. But an extension of time voluntarily given, i. e., indulgence or delay, by the holder, does not discharge the accommodation party. — *Thompson v. McDonald*, (1858), 17 U. C. Q. B. 304; *Wilson v. Brown*, (1881), 6 O. A. R. 87; *Fleming v. McLeod*, (1907), 39 S. C. R. 290; *Anthes v. Stoltz*, (1908), 12 O. W. R. 549; *Sovereign v. Thompson*, (1909), 14 O. W. R. 387. Nor does a contract for an extension of time between the holder and a third person, not the party accommodated, discharge the accommodation party. — *Hough v. Kennedy*, (1910), 13 West. L. R. 674. But, if the contract between the accommodated party and the holder reserves the latter's rights against the accommodation party, he is not discharged. — *Bank v. Jardine*, (1859), 9 U. C. C. P. 332; *Canadian Bank v. Northwood*, (1887), 14 O. R. 207; *Sovereign v. Thompson*, *supra*. Furthermore, as in the case of other sureties, a release of the principal, the accommodated party, by the holder, or a surrender by the holder of collateral security, e. g., the release of a mortgage, discharges the accommodation party. — *City Bank v. Murdock*, (1861), 11 U. C. C. P. 138. *semble*; *Allison v. McDonald*, (1894), 23 S. C. R. 635. But the exchange by the holder of worthless collateral security for other collateral which proves to be worthless, since it does not prejudice, does not discharge the accommodation party. — *Wade v. Livingston*, *supra*. Although an accommodation maker is not entitled to notice of dishonour, it has been held that as a surety, if a failure to notify him of his principal's default operates to his prejudice, he is discharged. — *Hough v. Kennedy*, (1910), 13 West. L. R. 674. *Contra*, *Wilson v. Brown*, (1881), 6 O. A. R. 87. See *Gardner v. Shaver*, (1893), 13 C. L. T. 287. The holder's entering into a composition with the accommodated party and his creditors and accepting in full satisfaction less than the amount due upon the bill or note does not discharge the accommodation party. — *Lyman v. Dyon*, (1868), 13 L. C. Jur. 160. An accommodation party is entitled to the rights, as well as the defences, of a surety. He may maintain an action for indemnity against his principal, the accommodated party. — *Cullen v. Bryson*, (1892), Q. R. 2 S. C. 36; *Farrow v. McPherson*, (1910), 16 O. W. R. 1009, *semble*. And if the holder refuses and neglects to enforce a note against the accommodated

maker, the accommodation indorser may maintain a bill for exoneration against them. — *Cunningham v. Lyster*, (1867), 13 Grant, 575. Presumptively a bill or note is business and not accommodation paper. — *Mair v. McLean*, (1841), 1 U. C. Q. B. 455; *Morehouse v. Burland*, (1875), Ram. App. 280; *Packer v. Fuller*, (1877), Ram. App. 281; *Rousseau v. Nadeau*, (1909) Q. R. 19 K. B. 97. As between themselves, when there are several accommodation parties, they are liable according to the order of liability ordinarily imposed upon other parties signing in the same capacities. Thus, if A. makes and B. indorses a note for the accommodation of a third person, A as between himself and B. is ultimately liable to pay the note; for although A. and B. are sureties for the accommodated parties, they are not co-sureties, but B. is surety for A. — *Hobbrecker v. Sanders*, (1909), 6 East. L. R. 567. Similarly, two or more accommodation indorsers are, as between themselves, liable in the order in which they indorse. But accommodation parties may fix by collateral agreement between themselves the order of their liability as respects one another. Such an agreement, however, has no effect upon the holder's right upon the bill or note, even though he purchased with notice of it. See note to § 65.

**Holder in due course. Notice. Good faith. Title defective. 56.** A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely: a) That he became the holder of it before it was overdue and without notice that it had been previously dishonoured, if such was the fact; b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it. 2. In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

Imp. § 29. *Holder in due course.* — For definition of holder see § 2, *supra*. Under the present section and section 2, *supra*, the payee of a bill or note may be a holder in due course of such bill or note. — *Robinson v. Mann*, (1901), 31 S. C. R. 484; *Knechtel Fur. Co. v. Furnishers*, (1909), 11 West. L. R. 344, *aff'd* (1910), 14 West. L. R. 175.

*Complete and regular on its face.* — See §§ 17, 27 (a), 32, *supra*, and 143, *infra*, and notes. See also notes under "notice" *infra*.

*Before overdue.* — As to bills and notes payable at sight or at a fixed time, see §§ 42—46, *supra*. As to demand bills, see § 70, *infra*, and note. As to demand notes see § 182, *infra*. A note which provides for the payment of interest by instalments, one instalment of which has not been paid, when due, is not, for that reason, an overdue note. — *Union Investment Co. v. Wells*, (1908), 39 S. C. R. 625. Cp. *Moore v. Scott*, (1906), 5 West. L. R. 8, 147, 381.

*In good faith and without notice of previous dishonour or defect in title.* — An allegation of absence of notice is equivalent to an allegation of good faith. — *Gibson v. Coates*, (1905), 1 West. L. R. 556. A holder with notice cannot be a holder in good faith. — *Larkin v. Wiard*, (1838), 5 U. C. Q. B. (O. S.) 661. Whether or not there was notice is a question of fact, primarily for the jury. — *Evans v. Morley*, (1862), 21 U. C. Q. B. 547. Notice need not, however, be formal or direct. — See *Banque d'Hochelaga v. Grenier*, (1896), 3 Rev. de Jur. 86. For example, any circumstances which would naturally place a person on guard and the ignoring of which by the holder in purchasing the bill or note points toward the conclusion that he refrained from investigation for fear of discovering some defect of title, are a sufficient basis for the inference of notice. Thus, where the maker gave two promissory notes payable to C. or bearer, but having indorsed upon them contemporaneously with their making and in the case of one of them on the edge of the paper the words "the within notes not to be sold," — which indorsement was shown by the evidence to have formed part of the contract between the parties, — and the notes were transferred to the plaintiff with the word "not" in the above indorsement, in the case of one of them erased, and in the case of the other, the whole of the indorsement, which was written along the edge, torn off, but without destroying any part of the face of the note, and it appearing that the plaintiff had noticed the erasure on the one of them first purchased, that he knew that they had both been given in payment for patent rights and that he paid much less than commercial value for them, while they bore marks of infirmity, it was held that the plaintiff could not be considered a holder without notice of defects of title. — *Swaissland v. Davidson*, (1883), 3 O. R. 320. But the fact that the word "renewal" has been written on the back of a note and erased is not sufficient notice to prevent an indorsee for value from becoming a holder in due course. — *Larkin v. Wiard*, (1838), 5 U. C. Q. B. (O. S.) 661. The fact of a maker's signature having been used without authority is a fact material for the jury to consider in connection with other evidence offered to show that the plaintiff took the note with knowledge of the circumstances. — *Hanscome v. Cotton*, (1857), 16 U. C. Q. B. 98. See also note to § 58. Where an indorsee takes with knowledge that an instalment of interest, due at a certain time according to the terms of the instrument, was not paid when due, such knowledge is sufficient to put him on guard and prevent him from taking the instrument as a holder in due course. — *Moore v. Scott*, (1906), 5 West. L. R. 8, 147, 381. But he clearly takes as holder in due course if he has no such knowledge. — *Union Investment Co. v. Wells*, (1908), 39 S. C. R. 625. Neg-



ligence, even though gross, in failing to inquire as to the title of transferrer, however, if not induced by actual bad faith, does not deprive the holder of his position as a holder in due course. — *Cross v. Currie*, (1880), 5 O. A. R. 31, following the opinion of Lord Denman in *Goodman v. Harvey*, (1836), 4 A. & E. 870. Knowledge of an agent is considered the knowledge of the principal. — *Millar v. Plummer*, (1893), 22 S. C. R. 253. And where a note payable to a firm is indorsed and transferred to one of the partners, any defence which would be good against the firm, is equally good against such partner. — *Vezina v. Piche*, (1898), Q. R. 13 S. C. 213.

*Real defences.* — Where the instrument creates no legal obligation, its nullity is, of course, available as a defence even against a holder in due course. So this defence is available where one's name is signed as maker of a note without authority. — *Hanscome v. Cotton*, (1857), 16 U. C. Q. B. 98. So also where a married woman makes a note for a purpose for which she has no legal right to bind herself. — *Banque Nationale v. Guy*, (1891), M. L. R. 7 S. C. 144; *Ricard v. La Banque Nationale*, (1893), Q. R. 3 Q. B. 161; *Maclean v. O'Brien*, (1896), Q. R. 12 S. C. 110. Where, without negligence on his part, one is deceived as to the character of the instrument he is signing, he has a good defence even against a holder in due course. — See cases cited in note to § 40, *supra*. Where by statute, an instrument is made absolutely null so that no cause of action may be had upon it, it is, of course, not enforceable even by a holder in due course. Thus, in Ontario a cheque given in settlement of losses at matching coppers was held to have been given in consideration of a gambling debt within § 53 (3), R. S. O. c. 47, and under 9 Anne c. 14, is void even in the hands of a holder in due course. — *Summerfeldt v. Worts*, (1886), 12 O. R. 48. But under 12 Geo. 2, c. 28, a note given for the price of lottery tickets was not void in the hand of a holder in due course. — *Evans v. Morley*, (1862), 21 U. C. Q. B. 547. In Lower Canada it was early held that a note given for a gambling debt was null and void even in the hands of a holder in due course. — *Biroleau v. Derouin*, (1863), 7 L. C. Jur. 128. But see, *contra*, *Dion v. Lachance*, (1898), Q. R. 14 S. C. 77. See also *Dalglish v. Bond*, (1889), M. L. R. 7 S. C. 400; *Allan v. Robert*, (1907), 2 East. L. R. 556. It is also held in Lower Canada that the nullity declared by paragraph 3 of section 8 of the *Insolvent Act* of 1864 is an absolute nullity, and a promissory note given in violation of the provisions of the said paragraph is absolutely null and void in the hands of any holder. — *Davis v. Muir*, (1869), 13 L. C. Jur. 184.

*Personal defences.* — Defects in the title of a holder's transferrer which under this Act constitute defences to a holder not a holder in due course, but are not available against a holder in due course, and notice of which deprives the holder of his character as a holder in due course, exist: *Where the transferrer obtained the bill by fraud.* — *McCollum v. Church*, (1834), 3 U. C. Q. B. (O. S.) 356; *Dougall v. Post*, (1848), 5 U. C. Q. B. 554; *Gooderham v. Hutchison*, (1855), 5 U. C. C. P. 241; *Bank of Montreal v. Cameron*, (1859), 17 U. C. Q. B. 636; *Waddell v. Jaynes*, (1872), 22 U. C. C. P. 212; *Robinson v. Calcott*, (1875), Ram. App. 83; *Robertson v. Furness*, (1878), 43 U. C. Q. B. 143, *semble*; *Benoit v. Brais*, (1883), 6 Leg. News, 342; *Banque Jacques Cartier v. Leblanc*, (1892), Q. R. 1 Q. B. 128; *Darling v. McBurney*, (1894), Q. R. 6 S. C. 357; *Banque Jacques Cartier v. Gagnon*, (1894), Q. R. 6 S. C. 88; *Alloway v. Hutchinson*, (No. 2), (1898), 6 Terr. L. R. 425; *Campbell v. National Construction Co.*, (1909), 12 West. L. R. 152; *Le Page v. Le Page*, (1910), 13 West. L. R. 640; *Robertson v. North-western Register Co.*, (1910), 13 West. L. R. 613. *Where the transferrer obtained the bill by duress.* — *Macfarlane v. Dewey*, (1870), 15 L. C. Jur. 85; *Canada Farmers' M. Ins. Co. v. Watson*, (1875), 25 U. C. C. P. 1; *Doyle v. Carrol*, (1877), 28 U. C. C. P. 218; *Kneeshaw v. Collier*, (1879), 30 U. C. C. P. 265; *Commercial Bank v. Rokeby*, (1894), 10 Man. 281. *Where the transferrer obtained the bill for an illegal consideration, or in the pursuance, with the person from whom he acquired it, of an illegal purpose.* — *Blackwood v. Chinic*, (1809), 2 Rev. de Leg. 27; *Dwight v. Ellsworth*, (1852), 9 U. C. Q. B. 539; *Henry v. Little*, (1854), 11 U. C. Q. B. 296; *Gugy v. Larkin*, (1857), 7 L. C. R. 11; *Dufresne v. Guevremont*, (1859), 5 L. C. Jur. 278; *Green Shields v. Plamondon*, (1863), 8 L. C. Jur. 192; *Evans v. Morley*, (1862), 21 U. C. Q. B. 547; *Perrault v. Laurin*, (1863), 8 L. C. Jur. 195; *Martin v. Macfarlane*, (1865), 1 L. C. L. J. 55; *Sinclair v. Henderson*, (1865), 9 L. C. Jur. 306; *Smith v. McEachren*, (1868), 7 N. S. 299; *Macfarlane v. Dewey*, (1870), 15 L. C. Jur. 85; *Prevost v. Pickel*, (1872), 17 L. C. Jur. 314; *Canada Farmers' M. Ins. Co. v. Watson*, (1875), 25 U. C. C. P. 1; *Dorais v. Chali-foux*, (1875), 6 Rev. Leg. 325; *Toponce v. Martin*, (1876), 38 U. C. Q. B. 411; *Decelles v. Bertrand*, (1877), 21 L. C. Jur. 291; *McDonald v. Senez*, (1877), 21 L. C. Jur. 290; *Bank of Toronto v. McDougall*, (1877), 28 U. C. C. P. 345; *Doyle v. Carroll*, (1877), 28 U. C. C. P. 218; *Robertson v. Furness*, (1878), 43 U. C. Q. B. 143; *Arpin v. Poulin*, (1878), 22 L. C. Jur. 331; *Bank of Montreal v. Audette*, (1878), 4 Q. L. R. 254; *Kneeshaw v. Collier*, (1879), 30 U. C. C. P. 265; *Gronard v. Gunidon*, (1879), 2 Leg. News 270; *MacLellan v. Davidson*, (1880), 20 N. B. 338; *Martin v. Poulin*, (1880), 1 Dorion, 75; *Wilkes v. Skinner*, (1882), Ram. App. 82; *Bell v. Riddell*, (1882), 2 O. R. 25, *aff'd* (1885), 10 O. A. R. 544; *Normand v. Beausoleil*, (1882), 2 Dorion, 215, *aff'd* (1883), 9 S. C. R. 711; *Chapleau v. Lemay*, (1886), 14 Rev. Leg. 198; *Bois v. Gervais*, (1887), 10 Leg. News, 195; *Leclaire v. Casgrain*, (1887), M. L. R. 3 S. C. 355; *Lawrence v. Hearn*, (1888), 21 N. S. 375; *Lefebvre v. Berthiaume*, (1889), 18 Rev. Leg. 198; *Gervais v. Dube*, (1890), M. L. R. 6 S. C. 91; *Racine v. Champoux*, (1890), M. L. R. 6 S. C. 478; *Dalglish v. Bond*, (1890), M. L. R. 7 S. C. 400; *Dansereau v. St. Louis*, (1890), 18 S. C. R. 587; *Lamallice v. Ethier*, (1890), Q. R. 1 S. C. 377; *Lees v. McArthur*, (1891), 35 L. C. Jur. 33; *Greene v. Tobin*, (1892), Q. R. 1 S. C. 377; *Collins v. Baril*, (1892), Q. R. 1 S. C. 377; *Garneau v. Lariviere*, (1892), Q. R. 1 S. C. 491; *Benard v. McKay*, (1893), 9 Man. 156; *Banque Jacques Cartier v. Gagnon*,

(1894), Q. R. 5 S. C. 499; *Bury v. Nowell*, (1896), Q. R. 10 S. C. 537; *Fisher v. Genser*, (1898), Q. R. 15 S. C. 605; *Budden v. Rochon*, (1898), Q. R. 15 S. C. 322; *Bellemare v. Gray*, (1899), Q. R. 16 S. C. 581; *Leggatt v. Brown*, (1899), 30 O. R. 225; *Brigham v. Banque Jacques Cartier*, (1900), 30 S. C. R. 429; *Bruneau v. Laliberte*, (1901), Q. R. 19 S. C. 425; *St. Pierre v. L'Ecuyer*, (1902), Q. R. 23 S. C. 495; *Crowder v. Sullivan*, (1904), 9 O. L. R. 27; *Banque Nationale v. Drolet*, (1905), Q. R. 28 S. C. 146; *Allan v. Robert*, (1907), 2 East. L. R. 556; *Dean v. McLean*, (1909), 7 East. L. R. 557; *Cashon v. Kaulbach*, (1910), 8 East. L. R. 411. *Where the transferor negotiated the instrument in breach of faith.* — Where the negotiation is in breach of faith because of the existence of an agreement made with respect to the instrument or its proceeds, such an agreement is a defence constituting a defect in title within the meaning of this section and is available against a holder not a holder in due course. Thus a holder not in due course will be bound by an agreement relieving an indorser of liability. — *McQuinn v. Sorell*, (1851), 7 N. B. 140. By an agreement to dispose of the proceeds of the note in a certain way or to use the note for a particular purpose only. — *Broke v. Arnold*, (1823), Tay. 25; *Larkin v. Wiard*, (1838), 5 U. C. Q. B. (O. S.) 661; *Cross v. Currie*, (1880), 5 O. A. R. 31; *Millar v. Plummer*, (1893), 22 S. C. R. 253; *McArthur v. McDowell*, (1893), 23 S. C. R. 571. By an agreement to further extend the time of payment. — *Britton v. Fisher*, (1867), 26 U. C. Q. B. 338; *Goldstein v. Gillis*, (1909), 10 West. L. R. 109; *McGregor v. Bishop*, (1887), 14 O. R. 7. By an agreement not to negotiate after maturity. — *Grant v. Winstanley*, (1871), 21 U. C. C. P. 257. By an agreement to apply a distinct charge toward payment. — *Ching v. Jeffery*, (1885), 12 O. A. R. 432. See also *Northern Crown Bank v. Yearsley*, (1910), 16 O. W. R. 401; *Brooks v. Clegg*, (1862), 12 L. C. R. 461. *Where the negotiation is in breach of faith because in breach of trust imposed upon the holder who negotiates for the benefit of some previous party to the instrument, such breach of trust is a defence in an action against such previous party by a holder not a holder in due course.* — *Kerr v. Straat*, (1851), 8 U. C. Q. B. 82; *Walter v. Molsons Bank*, (1877), Ram. App. 80; *Quebec Bank v. Bryant*, (1891), 17 Q. L. R. 98. See also *Arpin v. Poulin*, (1878), 1 Leg. News, 290. So where an agent, acting within the scope of his apparent authority, but without actual authority to make the particular indorsement and delivery, negotiates a bill, such breach of authority is a defence in an action against the principal by a holder not in due course. — *West v. McInnes*, (1864), 23 U. C. Q. B. 357; *McLeod v. Carman*, (1869), 12 N. B. 592; *Banque Nationale v. City Bank*, (1873), 17 L. C. Jur. 197; *Sylvain v. Flanagan*, (1875) Ram. App. 80; *Cross v. Currie*, (1880), 5 O. A. R. 31; *Rheinhardt v. Shirley*, (1894), Q. R. 6 S. C. 11; *Cox v. Canadian Bank*, (1911), 16 West. L. R. 512. See also *Union Bank v. Bulmer*, (1885), 2 Man. 380. *Where the negotiation is in breach of faith toward some person who is not a party to the instrument, it has been held that a holder not in due course takes subject to such equity, except where an overdue instrument payable to bearer is left in the possession of an agent, in which case the simple possession by the agent of the overdue instrument has been held to amount to a representation by a beneficial owner that the agent has the right to deal with such instrument as his own.* — *Young v. MacNider*, (1895), 25 S. C. R. 272. In this case the same conclusion was reached in the Court of Queens' Bench on the ground that a bona fide holder who acquires overdue commercial paper takes subject only to the equities of prior parties to the paper. — *MacNider v. Young*, (1894), Q. R. 3 Q. B. 539, reversing *Young v. MacNider*, (1893), Q. R. 4 S. C. 208. In *Young v. MacNider*, (1895), 25 S. C. R. 272, Strong, C. J., said: "I do not agree with the Court of Queen's Bench that in general a bona fide holder who acquires ordinary commercial paper such as bills or notes after dishonour takes subject only to the equities of prior parties to the paper. Upon this point I agree with Mr. Justice Andrews that not merely the equities of prior parties, but also those of third parties, may be enforced against such holders. This is the effect of the decision in *In re European Bank*. Ex parte Oriental Commercial Bank (L. R. 5 Ch. App. 358), and I think we ought to follow that authority."

*Set-offs.* — The class of agreement above described as made with respect to the instrument or its proceeds is to be distinguished from another class of agreements which give rise to obligations having no relation to the instrument in question except that they exist between the same parties. This latter class of independent obligations or set-offs affords no defence against any holder subsequent to the holder so obliged. — *Wood v. Ross*, (1858), 8 U. C. C. P. 299; *Smith v. Nicholson*, (1859), 19 U. C. Q. B. 27; *Metropolitan Bank v. Snure*, (1860), 10 U. C. C. P. 24; *Hughes v. Snure*, (1863), 22 U. C. Q. B. 597; *Canadian Securities Co. v. Prentice*, (1882), 9 O. P. R. 324. See *Ferguson v. Stewart*, (1856), 2 U. C. L. J. 116. Prior to the adoption of this section, however, the Provincial law of Quebec permitted a money claim against any holder to be set up a defence to an action by holder not in due course. — *Gibson v. Lee*, (1814), 1 Rev. de Leg. 347; *Hays v. David*, (1852), 3 L. C. R. 112; *Duguay v. Senecal*, (1865), 1 L. C. L. J. 26; *Amazon Ins. Co. v. Quebec & G. P. S. S. Co.*, (1876), 2 Q. L. R. 310.

**Right of subsequent holder. 57.** A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Imp. § 29. Mere knowledge of, without participation in, any fraud or illegality affecting the bill or note, does not preclude the holder from acquiring the rights of a prior holder in due course. — *Wallbridge v. Becket*, (1855), 13 U. C. Q. B. 395; *Clarkson v. Lawson*, (1856), 14 U. C. Q. B. 67; *Cross v. Currie*, (1880), 5 O. A. R. 31; *Gauthier v. Reinhardt*, (1904), Q. R.



26 S. C. 134. But see *Baxter v. Bruneau*, (1889), 17 Rev. Leg. 359. Nor is the indorsee after maturity affected by the fact that knowledge of fraud had been disclosed to his indorser after the latter had acquired the position of a holder in due course. — *McLeod v. Carman*, (1869), 12 N. B. 592.

**Presumption of value. Due course. Burden of proof.** 58. Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value. 2. Every holder of a bill is *prima facie* deemed to be a holder in due course; but if, in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof that he is such holder in due course shall be on him, unless and until he proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill by some other holder in due course.

Imp. § 30. If the defendant pleads no consideration the burden of proof rests on him. — *Sutherland v. Patterson*, (1842), 1 Rob. & Jos. Dig. 511. Evidence to rebut the presumption of consideration must be clear and convincing. — *Ross v. Western L. & T. Co.*, (1900), Q. R. 11 Q. B. 292; *Larraway v. Harvey*, (1898), Q. R. 14 S. C. 97. The presumption of value, however, will not protect an executor who pays notes of the testator, after notice that they were without consideration and where intended as gifts to the payees. — *Re Williams*, (1896), 27 O. R. 405. Illegality of consideration, total or partial, is a defence against any immediate party. — *Leggatt v. Brown*, (1899), 30 O. R. 225. But if the illegality goes only to a part of the consideration, and the remaining part is sufficient to support the note, it will be enforced. — *Bellemarc v. Gray*, (1899), Q. R. 16 S. C. 581; *Laprés v. Massé*, (1901), Q. R. 19 S. C. 275. Where fraud or illegality is shown the onus has always rested upon the plaintiff to show himself a holder in due course, or to be claiming through such a holder. — *Maulson v. Arrol*, (1853), 11 U. C. Q. B. 81; *Hanscome v. Cotton*, (1857), 15 U. C. Q. B. 42; *Withall v. Ruston*, (1857), 7 L. C. R. 399; *Dumas v. Baxter*, (1885), 14 Rev. Leg. 496; *Exchange Bank v. Carle*, (1887), 31 L. C. Jur. 90; *Allo-way v. Hutchinson*, (No. 2), (1898), 6 Terr. L. R. 425. See also *Hunt v. Lee*, (1819), 2 Rev. de Leg. 28; *Belanger v. Baxter*, (1883), 6 Leg. News, 413; *Bank v. Cameron*, (1869), 17 U. C. Q. B. 636; *Robinson v. Calcott*, (1875), Ram. App. 83; *Banque Jacques Cartier v. Gagnon*, (1894), Q. R. 6 S. C. 88; *Farmer v. Ellis*, (1901), 2 O. L. R. 544. Until such proof of fraud or illegality the presumption in his favour relieves the plaintiff of the necessity of proving himself a holder in due course. — *Farmers' Bank v. Dominion Coal Co.*, (1893), 9 Man. 542; *Merchants' Bank v. McLeod*, (1910), 14 West L. R. 461. Such presumption existed prior to this section. — *Bard v. Francoeur*, (1894), Q. R. 7 S. C. 315. The presence of the words "value received" on the bill or note do not prevent the shifting of the burden of proof upon evidence of fraud. — *Baxter v. Bilodeau*, (1883), 9 Q. L. R. 268. On proof of fraud or illegality the plaintiff must prove not only that he gave value, but that he took in good faith. — *Gibson v. Coates*, (1905), 1 West. L. R. 556. But fraud or illegality must be shown and proof that the note was for accommodation will not suffice. — *Farmers' Bank v. Dominion Coal Co. supra*; *Miller v. Ferrier*, (1850), 7 U. C. Q. B. 540; *Muir v. Cameron*, (1852), 10 U. C. Q. B. 356; *Merchants Bank v. Coal Co.*, (1894), 16 O. P. R. 87. See note to § 53.

**Usurious consideration.** 59. No bill, although given for a usurious consideration or upon a usurious contract, is void in the hands of a holder, unless such holder had at the time of its transfer to him actual knowledge that it was originally given for a usurious consideration, or upon a usurious contract.

Imp. § 30. There is no usury law in Canada, and this section is therefore inoperative. Money lenders on loans under \$ 500 may not exact more than 12 per cent. per annum. In case of negotiable instruments negotiated to a holder in due course, discounted by such a money lender at a rate in excess of 12 per cent. the holder may recover the full amount of the instrument, but the party paying the same may recover from the money lender the amount paid in excess of 12 per cent. interest. — R. S. C. 1906, c. 32, §§ 6, 8.

### Negotiation.

**By transfer. By delivery. By endorsement.** 60. A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill. 2. A bill payable to bearer is negotiated by delivery. 3. A bill payable to order is negotiated by the endorsement of the holder completed by delivery.

Imp. § 31. The acceptance of a bill of exchange is not a negotiation of it. — *Foster v. Bowes*, (1857), 2 O. P. R. 256. The holder of notes payable to order cannot sue thereon if the payee's indorsement through which he claims has been erased. — *Hempsted v. Drumond*, (1859), 10 L. C. R. 27. A bill of exchange payable to order is not transferred within this section if the holder's transferrer to whom it was indorsed specially has failed to add his indorsement. — *Forsyth v. Lawrence*, (1886), 7 C. L. T. 174. But a bill payable to bearer is transferable by delivery notwithstanding its special indorsement. — *Exchange Bank v. Bank*, (1890), M. L. R. 6 S. C. 10. The negotiation of a note payable to order is not complete without delivery. Consequently a holder in possession of an instrument bearing his indorsement, may recover upon it, the indorse-

ment appearing to be incomplete for want of delivery. — *Demers v. Hogle*, (1895), Q. R. 7 S. C. 476; *Canadian Co-operative Co. v. Trauniczek*, (1908), 8 West. L. R. 550. The case of *Dupuis v. Marsan*, (1872), 17 L. C. Jur. 42, holding that a note payable to order, for less than \$ 50, may be negotiated by delivering without indorsement, is no longer law. — *Maclaren, Bills, notes, and cheques*, p. 203. Where a note is payable to a testator, the indorsement by one of several executors is sufficient. — *Almon v. Cock*, (1847), 3 N. S. 265. But a widow, not administratrix of her deceased intestate husband's estate, cannot by her indorsement negotiate a note of which he was indorsee, even to pay his funeral expenses or debts. — *Gerow v. Holt*, (1884), 24 N. B. 412. Where the deceased had purchased Canadian bills of exchange drawn on New York, his administrator in California, where he was domiciled and died, was held entitled to the proceeds, the Canadian bank having stopped payment on the bills. — *Young v. Cashion*, (1909), 14 O. W. R. 717. The title to a promissory note in the hands of a payee, upon the issuance of a writ of attachment against him, rests at once in the assignee, so as to preclude a subsequent transfer by the payee. — *Jenks v. Doran*, (1880), 5 O. A. R. 558. The purchaser or assignee of an estate, however, which includes a note payable to order and not indorsed, cannot sue as a holder, but only as the assignee of a chose in action, and is bound to give notice to the maker. — *Clonbrock Steam Boiler Co. v. Browne*, (1900), Q. R. 18 S. C. 375. In an action by the holder of a promissory note payable to the order of a third party, the plaintiff must allege an indorsement to himself. — *Lavallee v. Burrage*, (1911), 12 Q. P. R. 382. Merely alleging that a promissory note was "duly transferred" to the plaintiff is insufficient under this section and, while the statement of claim may be amended, it subjects the pleader to defendant's costs of defence. — *Heon v. Bonnet*, (1910), 14 West. L. R. 534.

**Without indorsement. Representative capacity. 61.** Where the holder of a bill payable to his order transfers it for value without endorsing it, the transfer gives the transferee such title as the transferer had in the bill, and the transferee in addition acquires the right to have the endorsement of the transferer. 2. Where any person is under obligation to endorse a bill in a representative capacity, he may endorse the bill in such terms as to negative personal liability.

Imp. § 37. Where a transfer is for value and the indorsement is omitted by mistake, the transferee without indorsement may compel his transferer to indorse. However, the transferee without indorsement of a note payable to order may treat the delivery as an assignment to him, and in the same manner as the assignee of any other chose in action recover from the maker the amount due upon the note. Consequently, in an action against the maker of a note payable to his own order, and delivered by him without indorsement to the plaintiff, it is useless to order the maker to indorse. — *Coutu v. Rafferty*, (1891), M. L. R. 7 S. C. 146, rvd. on another point, (1893), Q. R. 2 Q. B. 387. See also *Guerin v. Orr*, (1882), 5 Leg. News, 379. As to the necessity of indorsement in case of retransfer, see § 73 and notes.

**Endorsing. Writing. Entire bill. Allonge. Partial indorsement. 62.** An endorsement in order to operate as a negotiation: a) Must be written on the bill itself and be signed by the endorser; b) Must be an endorsement of the entire bill. 2. An endorsement written on an allonge, or on a copy of a bill issued or negotiated in a country where copies are recognized, is deemed to be written on the bill itself. 3. A partial endorsement, that is to say, an endorsement which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the bill to two or more endorsees severally, does not operate as a negotiation of the bill.

Imp. § 32. A bank stamping its name for the purpose of identification and not of negotiation, on cheques which it was sending through the clearing house, is not an indorser. — *Rex v. Bank of Montreal*, (1905), 10 Q. L. R. 117, 135, s. c. (1906), 11 Q. L. R. 595, (1907), 38 S. C. R. 258.

**Signature sufficient. Two or more payees. 63.** The simple signature of the endorser on the bill, without additional words, is a sufficient endorsement. 2. Where a bill is payable to the order of two or more payees or endorsees who are not partners, all must endorse, unless the one endorsing has authority to endorse for the others.

Imp. § 63. Where the designation of the payee in a note is the name of a trade union, which in neither a corporation nor a partnership, an indorsement in the name of the union by the president and secretary is insufficient to pass title. *Seemle*, that the only valid method of transferring such a note is by the indorsement of each of the members of the union. Query, as to the proper parties as plaintiffs in an action on the note by, or on behalf of, the union. — *Cooper v. McDonald*, (1909), 11 West. L. R. 173. Where a partnership consisting of M. and C. and plaintiff indorse a cheque to defendant for collection and on the authority of M. and C. the proceeds are deposited to the credit of a new partnership of which plaintiff is not a member, the defendant is guilty of no breach of trust, the cheque having been properly indorsed and the new firm using the proceeds to pay the debts of the old firm. — *Ross v. Chandler*, (1909), 13 O. W. R. 247.

**Misspelling payee's name. 64.** Where, in a bill payable to order, the payee or endorsee is wrongly designated, or his name is misspelt, he may endorse the bill as therein described, adding his proper signature; or he may endorse by his own proper signature.

Imp. § 32.



**Presumption as to order of endorsement.** 65. Where there are two or more endorsements on a bill, each endorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

Imp. § 32. Each indorser engages that in case of dishonour and due proceedings upon dishonour he will compensate his indorsee and subsequent holders. — § 133, *infra*. But in case of retransfer, in order to avoid circuity of action, the holder may not charge indorsers subsequent to him. — §§ 73, 140, *infra*. If by collateral agreement, however, a subsequent indorser has surrendered his right of recourse against a prior indorser, the objection of circuity of action being obviated, the prior may maintain an action on the bill or note against the subsequent indorser. Thus, if the second indorser indorsed for the accommodation of the maker, the former is liable to the payee, the first indorser. — *Foster v. Farewell* (1855), 13 U. C. Q. B. 449; *Moffatt v. Rees*, (1858), 15 U. C. Q. B. 527; *Wordsworth v. Mac Dougall*, (1858), 8 U. C. C. P. 403; *Gunn v. McPherson*, (1859), 18 U. C. Q. B. 244. See also *Day v. Sculthorpe*, (1861), 11 L. C. R. 269; *Léveillé, v. Daigle*, (1880), 2 Dorion, 129; *Willett v. Court*, (1883), 6 Leg. News, 204; *Scott v. Turnbull*, (1883), 6 Leg. News, 397; *Deschamps v. Leger*, (1886), M. L. R. 3 S. C. 1. Similarly, if accommodation indorsers agree with each other that as between themselves they shall be co-sureties, such an agreement is effective, and one of them who has taken up the bill or note may hold each of the others, whether his indorsement is prior or subsequent, for his proportionate share of the amount of the instrument and no more. — *Bowes v. Holland*, (1856), 14 U. C. Q. B. 316, 323; *Clipperton v. Spettigue*, (1868), 15 Grant, 269; *Cockburn v. Johnston*, (1869), 15 Grant, 577; *Vallée v. Talbot*, (1892), Q. R. 1 S. C. 223; *Stacey v. Stayner*, (1903), 7 O. L. R. 684. But accommodation indorsers are presumptively not co-sureties as between themselves but are liable as respects one another in accordance with the order of their indorsements. — *Breeze v. Baldwin*, (1837), 5 U. C. Q. B. (O. S.) 444; *Lachance v. Duval*, (1910), Q. R. 37 S. C. 475; *Poisson v. Bourgeois*, (1898), Q. R. 17 S. C. 94; *McRae v. Lionais*, (1899), Q. R. 16 S. C. 262. However if by the form of the contract of accommodation indorsers they are not several successive, but joint, promisors, as in the case of the indorsement of joint payees, or of a partnership, the rights of one of the joint indorsers upon taking up the bill or note against his co-indorsers are limited to contribution. — *Clipperton v. Spettigue*, (1868), 15 Grant, 269; *Small v. Riddel*, (1880), 31 U. C. C. P. 373. Obviously collateral agreements between indorsers with respect to their rights as between themselves, have no effect upon the right of a holder of the bill or note, not a party to the agreement, even though a purchaser with notice, to charge the indorsers severally upon the instrument. — *Elder v. Kelly*, (1850), 8 U. C. Q. B. 240. See also *McLean v. Garnier*, (1881), 14 N. S. 432.

**Disregarding condition.** 66. Where a bill purports to be endorsed conditionally, the condition may be disregarded by the payer, and payment to the endorsee is valid, whether the condition has been fulfilled or not.

Imp. § 33.

**Endorsement in blank. Special endorsement. Application of Act to. Conversion of blank endorsement.** 67. An endorsement may be made in blank or special. 2. An endorsement in blank specifies no endorsee, and a bill so endorsed becomes payable to bearer. 3. A special endorsement specifies the person to whom, or to whose order, the bill is to be payable. 4. The provisions of this Act relating to a payee apply, with the necessary modifications, to an endorsee under a special endorsement. 5. Where a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing above the endorser's signature a direction to pay the bill to or to the order of himself or some other person.

Imp. §§ 32, 34.

**Restrictive endorsement. What is. Rights of endorsee. If further transfer is authorized.** 68. An endorsement may also contain terms making it restrictive. 2. An endorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill is endorsed 'Pay D only,' or 'Pay D for the account of X,' or 'Pay D, or order, for collection.' 3. A restrictive endorsement gives the endorsee the right to receive payment of the bill and to sue any party thereto that his endorser could have sued, but gives him no power to transfer his rights as endorsee unless it expressly authorizes him to do so. 4. Where a restrictive endorsement authorizes further transfer, all subsequent endorsees take the bill with the same rights and subject to the same liabilities as the first endorsee under the restrictive endorsement.

Imp. §§ 32, 35. Formal words of restriction are not necessary and an indorsement stating that the note is not to be sold will suffice. — *Wilson v. McQueen*, (1840), Rob. & Jos. Ont. Dig. 491. An indorsement to "A., to the use of B.," although restrictive, does not prevent the negotiation of the instrument by A., but does affect purchasers from A. with notice of B.'s equitable rights, if any. — *Munro v. Cox*, (1870), 30 U. C. Q. B. 363. Such an indorsement does not, however, affect subsequent purchasers with notice of the equities of other parties to the instrument, e. g.,

of the maker's defence of failure of consideration. — *Munro v. Cox, supra*. The operation of a restrictive indorsement as notice is not affected by a subsequent blank or special indorsement. Thus, a bank which has credited the proceeds of a cheque restrictively indorsed "for collection" to one who had indorsed in blank below the restrictive indorsement, is chargeable by the restrictive indorsee. — *Perreault v. Bank*, (1905), Q. R. 27 S. C. 149.

**When negotiability ceases. 69.** Where a bill is negotiable in its origin, it continues to be negotiable until it has been: a) Restrictively endorsed; or, b) Discharged by payment or otherwise.

Imp. § 36. See note to § 70.

**Overdue bill. Equities. Demand bill when. Time. 70.** Where an overdue bill is negotiated, it can be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which had the person from whom he took it. 2. A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. 3. What is an unreasonable length of time for such purpose is a question of fact.

Imp. § 36. *Overdue instalments.* A note is not overdue within this section simply because an instalment of interest was not paid when due, the principal not being then due. — *Union Investment Co. v. Wells*, (1908), 39 S. C. R. 625. But if the holder at the time of indorsement to him knew of the non-payment of such instalment of interest, although there may not have been a dishonour, he is not a holder in due course. — *Moore v. Scott*, (1906), 5 West. L. R. 8, s. c. (1907), 5 West. L. R. 381. See also *Jennings v. Napanee Co.*, (1884), 4 C. L. T. 595. As to a purchaser after maturity generally, see note to § 56.

*Unreasonable length of time.* — Under this section it was held where a cheque was held by the payee for three days and then transferred for value to the plaintiff, and where it appeared that the usage of trade in that vicinity was that cheques were not always presented for payment immediately, but were frequently kept for some days and transferred from hand to hand as a convenient circulating medium, that such delay of three days was not unreasonable and therefore the cheque was not overdue when it was indorsed to the plaintiff. — *Campbell v. Riendeau*, (1892), Q. R. 2 Q. B. 604. And where a customer mailed his bank on May 23, a cheque drawn by defendant payable to him, dated May 16th, it was held that under the circumstances this interval of seven days was not an unreasonable length of time so as to make the cheque an overdue bill within the meaning of this section. — *Bank v. Warren*, (1909), 19 O. L. R. 257. *MacLaren, J. A.*, delivering the judgment of the Court, said: "Under sec. 70 an overdue bill can be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which had the person from whom he took it. A cheque or other bill payable on demand is deemed to be overdue for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for such purpose is a question of fact. This case was tried without a jury, and the trial Judge found as a fact, on the evidence, that the cheque had not been in circulation an unreasonable length of time. It was drawn on a Saturday in favour of a Toronto business man, who, being temporarily in Chicago, sent it from his hotel there the following Saturday in the letter above copied. There was no delay after this. The cases go to show that even a longer delay than here without any surrounding suspicious circumstances has not been considered sufficient to make a cheque stale or overdue. In my opinion, the finding of the trial Judge was quite right in the circumstances, and no valid ground was given for our overruling it. See *London and County Banking Co. v. Groome*, 8 Q. B. D. 288, and *Daniel on Negotiable Instruments*, sec. 1634." See notes to §§ 77, 166, and 182, *infra*.

**Presumption as to. 71.** Except where an endorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

Imp. § 36.

**Taking bill with notice of dishonour. 72.** Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour; but nothing in this section shall affect the rights of a holder in due course.

Imp. § 36. The purchaser of a note upon which one of the instalments of interest is due and unpaid to his knowledge, holds it subject to defences. — *Moore v. Scott*, (1905), 5 West. L. R. 8, s. c. (1907), 5 West. L. R. 381. But see *Union Investment Co. v. Wells*, (1908), 39 S. C. R. 625. See also *Jennings v. Napanee Brush Co.*, (1884), 4 C. L. T. 595.

**Re-issue of bill. 73.** Where a bill is negotiated back to the drawer, or to a prior endorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce the payment of the bill against any intervening party to whom he was previously liable.

Imp. § 37. "Payment to operate as a discharge must be made at or after maturity, and if made before it operates as a mere purchase of the note, which may be negotiated and re-issued."



— *Vanier v. Kent*, (1902), Q. R. 11 K. B. 373, 383. See notes to §§ 140, *infra*, and 65, *supra*.

**Rights of holder. Prior defects. Title from him. Discharge from him. 74.** The rights and powers of the holder of a bill are as follows: a) He may sue on the bill in his own name; b) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill; c) Where his title is defective, if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and, d) Where his title is defective if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

Imp. § 37. As to the position of a holder in due course, see § 56. and notes.

#### *Presentment for acceptance.*

**When necessary. Express stipulation. Other cases. 75.** Where a bill is payable at sight or after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument. 2. Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment. 3. In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

Imp. § 39. "The words, 'at sight or' were inserted in the bill in the Canadian House of Commons after it had been determined not to change our law which allowed grace on bills payable at sight, and they had been struck out of section 10, where they stood as one of the classes of bills payable on demand." — *Maclaren, Bills, notes, and cheques*, p. 235. See §§ 44, 45, and 77. Thus when a bill is payable 15 days after sight a demand for payment unaccompanied by a presentment for acceptance is insufficient and the action will be dismissed. — *Cousineau v. Lecours*, (1888), M. L. R. 4 S. C. 249. "The Act does not give definite directions as to the proper place to present a bill but the rules laid down in section 88, as to presentment for payment, would seem to be reasonable so far as they are applicable." — *Maclaren, l. c.*, p. 235. Subsection 2 apparently changes the law in Ontario, where it had been held that where a bill was payable three month after date, elsewhere than at the residence or place of business of the drawee, presentment for acceptance was unnecessary. — *Richardson v. Daniels*, (1838), 5 U. C. Q. B. (O. S.) 671.

**Presentment excused. 76.** Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and endorsers.

Imp. § 39. As to reasonable diligence, see note to § 77, *infra*.

**Sight bill. If not presented. Reasonable time. 77.** Subject to the provisions of this Act, when a bill payable at sight or after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time. 2. If he does not do so, the drawer and all endorsers prior to that holder are discharged. 3. In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

Imp. § 40. *Reasonable time.* — A bill of exchange drawn in Toronto on August 6, 1849, by a party dealing in bills upon a party in New York, payable at sight, in favour of a party living in the state of Illinois, it being the understanding that it was to be used in paying a bill in Illinois and thus put into circulation there, was presented in New York on the 10th of November following. It was held that under all the circumstances the delay was not unreasonable, the court laying stress upon the facts that the drawer was a person dealing in bills in New York as a commodity and thus impliedly undertook to have funds there at all times; that the bill was used in payment almost immediately and thus put into circulation; that the drawer had not objected to the delay in the case of a previous bill which had been kept from presentment even longer. — *Boyes v. Joseph*, (1850), 7 U. C. Q. B. 505. And where the defendants indorsed on October 8th a bill payable after sight, drawn on Liverpool, England, and the drawer held it over two mails, selling it on November 5th for its full value to the plaintiffs, who remitted it on the same day and it was accepted, but the acceptor failed before it was due, it was held that there had been no such delay as would constitute a defence on the ground of want of diligence in presenting. — *Wylde v. Wetmore*, (1869), 7 N. S. 504. But where a bill of exchange was drawn on August 27th, passed through the hands of two intermediate holders, was presented on the 1st September, refused payment and protested on September 8th, all the parties being in Montreal, it was held that presentation and protest had not been made with due diligence and action against indorser was dismissed. — *Harris v. Schwob*, (1871), 3 Rev. Leg. 453. What is

a reasonable time has been said to be a mixed question of fact and law. — *Perley v. Howard*, (1844). 4 N. B. 518. See *Maclaren, Bills, notes, and cheques*, p. 238, and *Falconbridge, Banking and bills of exchange*, p. 487. But see § 70 (3), *supra*, *Russell on Bills*, pp. 265—267, and *Tylde v. Wetmore, supra*. See as to reasonable time notes to §§ 86, 166, and 180, *infra*.

**Rules. By holder to drawee. To all drawees. To personal representative. Post office. 78.** A bill is duly presented for acceptance which is presented in accordance with the following rules, namely: a) The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue; b) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, when presentment may be made to him only; c) Where the drawee is dead, presentment may be made to his personal representative; d) Where authorized by agreement or usage, a presentment through the post office is sufficient.

Imp. § 41. *Manner of presentment for acceptance.* — “The Act does not give precise directions as to the presentment of a bill for acceptance. Some of the rules laid down in sections 86, 87, and 88 as to presentment for payment are no doubt applicable; but there is a difference in principle between the two presentments, the former being personal, and the latter local.” — *Maclaren, Bills, notes, and cheques. Where drawee is dead.* — See § 79 (a).

**Excuses. Drawee dead. Impracticability. Waiver. Excuse. 79.** Presentment in accordance with the aforesaid rules is excused, and a bill may be treated as dishonoured by non-acceptance: a) Where the drawee is dead, or is a fictitious person or a person not having capacity to contract by bill; b) Where, after the exercise of reasonable diligence, such presentment cannot be effected; c) Where although the presentment has been irregular, acceptance has been refused on some other ground. 2. The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

Imp. § 41. As to fictitious drawee, see § 26. As to capacity to contract by bill, see § 47. As to reasonable diligence, see § 92 (a) *infra*, and note.

**Time for acceptance. Dishonour. Loss of rights. Date of acceptance. Refusing acceptance. 80.** The drawee may accept a bill on the day of its due presentment to him for acceptance, or at any time within two days thereafter. 2. When a bill is so duly presented for acceptance and is not accepted within the time aforesaid, the person presenting it must treat it as dishonoured by non-acceptance. 3. If he does not so treat the bill as dishonoured, the holder shall lose his right of recourse against the drawer and endorsers. 4. In the case of a bill payable at sight or after sight, the acceptor may date his acceptance thereon as of any of the days aforesaid but not later than the day of his actual acceptance of the bill. 5. If the acceptance is not so dated, the holder may refuse to take the acceptance and may treat the bill as dishonoured by non-acceptance.

Imp. § 42.

**Dishonour. Presentment. Excuse. 81.** A bill is dishonoured by non-acceptance: a) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or, b) When presentment for acceptance is excused and the bill is not accepted.

Imp. § 43. See as to what constitutes a valid acceptance under this Act, §§ 36 and 38, *supra*.

**Recourse in such case. 82.** Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance an immediate right of recourse against the drawer and endorsers accrues to the holder, and no presentment for payment is necessary.

Imp. § 43. See as to suspension of the immediate right of recourse, §§ 147—155, *infra*. It seems that the right of recourse acquired under this section is an immediate right of action. — *Ross v. Dixie*, (1850), 7 U. C. Q. B. 414. Compare with note to § 95, (2) *infra*. In Quebec, under the Code, prior to the adoption of this section, the right of action was complete after notice of dishonour by non-acceptance was sent. — *Civil Code*, Art. 2298. See as to the rule under the old French law, *Preston v. Johnston*, (1813), 2 Rev. de Leg. 28.

**Qualified acceptance. Assent. 83.** The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance. 2. When the drawer or endorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

Imp. § 44. As to what is a qualified and what an unqualified acceptance under this Act, see § 38, *supra*.



**Qualified acceptance without authority. Partial acceptance. 84.** Where a qualified acceptance is taken, and the drawer or an endorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or endorser is discharged from his liability on the bill: Provided that this section shall not apply to a partial acceptance, whereof due notice has been given.

Imp. § 44.

*Presentment for payment.*

**Necessity. Result of non-presentment. Manner of. 85.** Subject to the provisions of this Act, a bill must be duly presented for payment. 2. If it is not so presented, the drawer and endorsers shall be discharged. 3. Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment.

Imp. §§ 45, 52. The consequence of not duly presenting a bill for payment is that the drawer and indorsers are discharged from their liability, not only on the bill, but also on the consideration for which it was given. — *Hart v. McDougall*, (1892), 25 N. S. 38. See as to circumstances which dispense with presentment and thus prevent such discharge, §§ 76 and 82, *supra*, and 91 and 92, *infra*. See also §§ 93 and 166, *infra*.

*Exhibition of bill.* — "The bill should be produced and exhibited, as the person paying has a right to it as a voucher in his account with other parties." — *Maclaren, Bills, notes, and cheques*, p. 248, citing *De la Chevrotière v. Guilmet*, (1886), 9 Leg. News, 412; *Jordan v. Coates*, (1850), 7 N. B. 107.

*Waiver of exhibition.* — If, on demand for payment, the bill is not asked for and payment is refused on some other ground, or inability to pay is acknowledged, exhibition of the bill is waived. — *Chandler v. Beckwith*, (1838), 2 N. B. 423. As to when presentment is dispensed with, see § 92, *infra*. Such special form of presentment is not, however, necessary if the bill is payable at a bank or other particular place and the bill is lying there at the maturity. — *Richardson v. Daniels*, (1838), 5 U. C. Q. B. O. S. 671. *Harris v. Perry*, (1858), 8 U. C. C. P. 407; *Pullen v. Sanford*, (1883), 16 N. S. 242; *Souther v. Wallace*, (1888), 20 N. S. 509; *Biggs v. Wood*, (1885), 2 Man. 272. As to what constitutes, in substance, in such a case, a sufficient presentment, see §§ 88 and 93, *infra*, and notes.

**Time for. Due date. Demand bill. Reasonable time. 86.** A bill is duly presented for payment which is presented: a) When the bill is not payable on demand, on the day it falls due; b) When the bill is payable on demand, within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its endorsement, in order to render the endorser liable. 2. In determining what is a reasonable time within the meaning of this section regard shall be had to the nature of the bill, the usage of trade with regard to similar bills and the facts of the particular case.

Imp. § 45. As to bills not payable on demand, presentment must under this section and § 42, *supra*, be made on the third day of grace, unless that be a non-business day, when it must be presented on the next business day. — See *Richardson v. Daniels*, (1838), 5 U. C. Q. B. (S. O.) S. 671; *McLellan v. McLellan*, (1866), 17 U. C. C. P. 109. "A bill may apparently (under this section) be presented at any reasonable hour of the day it falls due, or if payable on demand, at any reasonable time on any day on which the holder may choose to present it." — *Maclaren, Bills, notes and cheques*, p. 302. "This Act does not specify the hour of presentment for payment; but section 121 (b) provides that a protest shall not be made until after three o'clock in the afternoon. The Quebec Civil Code provided that a bill should be presented 'in the afternoon and, if payable at a bank, either within or after the usual hours of banking': art. 2306 . . . In Quebec it has been held that presentment at the closed doors of a bank after the usual office hours was not sufficient to base a protest upon. — *Watters v. Reiffenstein*, (1866), 56 L. C. R. 297. In New Brunswick where a note was payable at a 'store,' the only evidence was that when the holder went to present it the store was closed. It was held that in the absence of evidence it might be inferred that it was closed in the due course of business, and that the presentment was not made at a reasonable time. — *Patterson v. Tapley*, (1859), 9 N. B. 292. Presentment at the door of a store which was closed at 5 P. M. held sufficient. — *Reed v. Kavanagh*, (1859), 9 N. B. 457." — *Ibid.* p. 251.

*Bills payable on demand.* — As to what bills are payable on demand, see § 23, *supra*. As to the considerations which apply in determining what is a reasonable time, within the meaning of this section, see note to § 77, subsection 3, *supra*, and §§ 166 and 180, *infra*.

**By and to whom. Two acceptors. Personal representation. 87.** Presentment must be made by the holder or by some person authorized to receive payment on his behalf, at the proper place as hereinafter defined, and either to the person designated by the bill as payer or to his representative or some person authorized to pay or to refuse payment on his behalf, if, with the exercise of reasonable diligence such person can there be found. 2. When a bill is drawn upon, or accepted by two

or more persons who are not partners, and no place of payment is specified, presentment must be made to them all. 3. When the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative if such there is, and with the exercise of reasonable diligence, he can be found.

Imp. § 45. As to presentment when the drawer or acceptor is dead, see *Dana v. Bradley*, (1862), 10 N. B. 292, and notes to §§ 88 and 89, *infra*.

**Place of. When specified. When not specified. When no address is given. Other cases.** 88. A bill is presented at the proper place: a) Where a place of payment is specified in the bill or acceptance, and the bill is there presented; b) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented; c) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not at his ordinary residence, if known; d) In any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.

Imp. § 45. *Where place of payment specified.* — Under the present Act where a place of payment is specified either in the bill as originally drawn or in the acceptance, the bill must be presented there or the drawer and indorsers will be discharged. — *Driggs v. Waite*, (1842), 6 U. C. Q. B. (O. S.) 310; *Darling v. Gillies*, (1888), 9 C. L. T. 120. See also *O'Brien v. Stevenson*, (1865), 15 L. C. R. 265; *Ferrie v. Rykman*, (1830), *Dra.* 61; *Clayton v. McDonald*, (1893), 25 N. S. 443; *Biggs v. Wood*, (1885), 2 Man. 272. See note to § 38, *supra*.

*What is sufficient presentment at place specified.* — If the bill is at the bank or other place of payment at the maturity, this is a sufficient presentment. — *Richardson v. Daniels*, (1838), 5 U. C. Q. B. (O. S.) 671; *Bank of U. C. v. Street*, (1846), 3 U. C. Q. B. 29; *Blinn v. Dixon*, (1848), 5 U. C. Q. B. 580; *Harris v. Perry*, (1858), 8 U. C. C. P. 407. See *Union Bank v. McKilligan*, (1886), 4 Man. 29; *Rice v. Bowker*, (1853), 3 L. C. R. 305. See also §§ 89 and 90, and note to § 98, *infra*.

*What place is specified.* — A note made in Boston and payable "at any bank" means any bank in Boston. — *Baldwin v. Hitchcock*, (1869), 12 N. B. 310. And a note dated at Brandon, Manitoba, and made payable "at the Imperial Bank" is payable of the office of that bank in Brandon, and not at the head office in Toronto. — *Commercial Bank v. Bissett*, (1891), 7 Man. 586. Where a note was made payable "at my office in Toronto," and it was presented at the maker's former place of business where he had left an agent, it was held that such place was the maker's office, at least for the day, and the presentment was sufficient. — *Fitch v. Kelly*, (1879), 44 U. C. Q. B. 578.

*Where presentment may be made if not payable generally.* — As to proof that a place was the maker's last place of residence, see *Kinnear v. Goddard*, (1860), 9 N. B. 559. The maker of a promissory note, a merchant, having absconded before the note became due and closed his store, it was held that presentment at his late dwelling house was sufficient without proof of presentment at the store or that the store remained closed on the day the note fell due. — *Robinson v. Taylor*, (1843), 4 N. B. 198. See also *Evans v. Foster*, (1879), 13 N. S. 66; *Sharp v. Power*, (1900), 33 N. S. 371. As to when a bill is payable generally, see *Bécher v. Amherstburgh*, (1874), 23 U. C. C. P. 602; *McRobbie v. Torrance*, (1888), 5 Man. 114, and other cases cited in note to § 183, *infra*.

**Sufficient presentment.** 89. Where a bill is presented at the proper place as aforesaid and after the exercise of reasonable diligence, no person authorized to pay or refuse payment can there be found no further presentment to the drawee or acceptor is required.

Imp. § 48. It would seem from this section that mere presentment is not sufficient, but reasonable diligence in an effort to find at the proper place a person authorized to pay or refuse payment, is essential. "The statute, it will be observed, does not limit the requirement of reasonable diligence to the cases where the bill is payable generally. It applies in terms to every case where the bill is presented at the proper place and after the exercise of reasonable diligence no person authorized to pay or refuse payment can be found there. It is only when these conditions have been satisfied that the statute says that no further presentment to the drawee or acceptor is required. But the statute does not seem to call for a search elsewhere than at the place named." — *Russell on Bills*, pp. 287, 288. A note payable generally was left for collection at a bank in the town where the maker lived. Before it matured he left town. A clerk went to present it at the house where he formerly lived and could not learn there where he had gone. He had heard before the note matured that the maker had left town but heard different reports as to where he had gone. No inquiry was made at any of these places. It was proved that his leaving was no secret and his business partner was not asked as to his whereabouts. Held, that reasonable diligence was not used and the indorser was discharged. — *Browne v. Boulton*, (1851), 9 U. C. Q. B. 64. See also as to what constitutes due diligence in an effort to find a person authorized to refuse payment, *Robinson v. Taylor*, (1843), 4 N. B. 198 and *Kinnear v. Goddard*, (1860), 9 N. B. 559, cited in note to § 88, *supra*. It seems that the question of



reasonable diligence is one of fact for the jury. — See *Browne v. Boulton*, *supra*, and *Russell on Bills*, p. 287.

**Presentment at post office. Through post office. 90.** Where the place of payment specified in the bill or acceptance is any city, town, or village, and no place therein is specified, and the bill is presented at the drawee's or acceptor's known place of business or known ordinary residence therein, and if there is no such place of business or residence, the bill is presented at the post office, or principal post office in such city, town, or village, such presentment is sufficient. 2. Where authorized by agreement or usage, a presentment through the post office is sufficient.

**Imp. § 45.** Subsection 1 is new law in Canada. "The provisions of the section seem wholly inconsistent with the requirement of any diligence or effort to find the acceptor. The section does not occur in the Imperial Act . . . This somewhat haphazard amendment seems to say that the holder who has presented the bill at the actual known place of business or residence of the acceptor, or at the post office, if there is no such place of business or residence, has done all he is obliged to do. He need not present it at the last place of business or residence, and is not called upon to make any inquiries or use any diligence what ever to effect a personal presentation. It remains to be seen whether it will be so interpreted and how it will be harmonized with the other sections of the Act." — *Russell on Bills*, p. 288—289. Compare with §§ 88 and 89, *supra*, subsection 2 recognized a customary practice. It has been held that where it was the usual practice for bankers in Canada to present in this way cheques drawn upon their own correspondents, and the evidence showed that there was no suspicion of the credit or solvency of the drawee bank that transmission by mail was a proper mode of presentment. — *Queen v. Bank of Montreal*, (1886), 1 Ex. C. R. 154, 167. See notes to §§ 165 and 166, *infra*.

**Delay in presentment. Diligence. 91.** Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. 2. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

**Imp. § 46.** See *Union Bank v. McKilligan*, (1886), 4 Man. 29.

**Dispensed with. Impracticable. Fictitious drawee. Useless. Accommodation bill. Waiver. Not dispensed with. 92.** Presentment for payment is dispensed with: a) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected; b) Where the drawee is a fictitious person; c) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented; d) As regards an endorser, where the bill was accepted or made for the accommodation of that endorser, and he has no reason to expect that the bill would be paid if presented; e) By waiver of presentment, express or implied. 2. The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

**Imp. § 46.** Where by the exercise of reasonable diligence, presentment as required by §§ 88 and 90, *supra*, cannot be made, such presentment is dispensed with. — See *Forward v. Thompson*, (1854), 12 U. C. Q. B. 194. Whether reasonable diligence has been used has been held to be a mixed question of law and fact. — *Perley v. Howard*, (1844), 4 N. B. 518. See also as to what constitutes reasonable diligence, *Brown v. Boulton*, (1851), 9 U. C. Q. B. 64, cited in note to § 89, *supra*. See as to a similar question regarding notice of dishonour, § 106, *infra*. The dangerous illness of the maker of a note is not sufficient reason for dispensing with presentment. — *Nowlin v. Roach*, (1843), 4 N. B. 337. As to the presentment necessary in order to charge the indorser of an overdue note, see *Davis v. Dunn*, (1850), 6 U. C. Q. B. 327.

*Where the drawee is a fictitious person.* — See §§ 26 and 79 (a).

*Where drawer has no reason to believe that bill would be paid if presented.* — It has been held that a bill accepted for the accommodation of the drawer need not be presented in order to charge him where he has not provided funds to meet it. — *Stayner v. Howatt*, (1882), 15 N. S. 267. But it must be presented to charge the indorsers. — *Knapp v. Bank of Montreal*, (1850), 1 L. C. R. 252. But "the effect of the statute seems to be that a pleading that the presentment for payment was dispensed with under this section, would not be complete without setting forth the double condition: first, that the drawer or acceptor was not bound, as between himself and the drawer, to pay the bill; and secondly, that the drawer had no reason to believe that the bill would be paid if presented." — *Russell on Bills*, p. 293. So where a cheque was drawn on the 26th, and on the 27th the drawee bank failed and on that day the drawer served a writ on the bank in an action to recover a balance including the amount of the cheque, it was held that although *suspension* was not in itself an excuse for non-presentment and want of notice of dishonour before action, yet this event and the bringing of the action by the drawer, which operated as a countermand of payment, would do so. — *Blackley v. McCabe*, (1889), 16 O. A. R. 295.

*Where bill accepted or made for accommodation of indorser.* — See comment by Russell on § 92 (c), *supra*. Where a note was made and accepted for the accommodation of the last indorser and he made no provision for it, he is liable without presentment, but the prior indorsers are not. — *In re Boutin*, (1897), Q. R. 12 S. C. 186.

*Waiver.* — As to express waiver at time of drawing or indorsing, see § 34 (b), *supra*. A promise, oral or written, to pay after the bill is due with knowledge that the same has not been presented, is a waiver of presentment. — *McCarthy v. Phelps*, (1870), 30 U. C. Q. B. 57; *McCuniffe v. Allen*, (1850), 6 U. C. Q. B. 377; *Johnson v. Geoffrion*, (1863), 7 L. C. Jur. 125. See also *McIver v. McFarlane*, (1824), Tay. 113; *Macauley v. McFarlane*, (1840), Rob. & Jos. Dig. 493; *City Bank v. Hunter*, (1847), 2 Rev. de Leg. 171; *Watters v. Lordley*, (1842), 4 N. B. 13; *Allen v. McNaughton*, (1858), 9 N. B. 234; *St. Stephen B. Ry. Co. v. Black*, (1870), 13 N. B. 139; *Colwell v. Robertson*, (1877), 17 N. B. 481; *Whitehouse v. Bedell*, (1886), 26 N. B. 46; *Deering v. Hayden*, (1886), 3 Man. 219. See also cases cited in note to § 106, *infra*. Part payment is a waiver of presentment. — *Rice v. Bowker*, (1853), 3 L. C. R. 305. But where there is no evidence of knowledge by indorser that presentment was not duly made, a promise to pay after failure to receive notice of dishonour does not operate as a waiver of such presentment. — *Murray v. Ayer*, (1909), 6 East. L. R. 509. See *Nowlin v. Roach*, (1843), 4 N. B. 337, and *McFtridge v. Williston*, (1892), 25 N. S. 11. See also as to waiver in general Bank of U. C. v. *Turcotte*, (1865), 15 L. C. R. 203; *Barnett v. Monaghan*, (1871), 3 Rev. Leg. 448; *Union Bank v. Gibeault*, (1886), 12 Q. L. R. 145; *Bank of N. B. v. Knowles*, (1843), 4 N. B. 219. See also notes to §§ 106, 183, and 184, *infra*.

*Where the holder has reason to believe that the bill will, on presentment, be dishonoured.* — The insolvency of the acceptor does not dispense with necessity for presentment. — *Quebec Bank v. Ogilvy*, (1883), 3 Dorion, 200; *Blackley v. McCabe*, *supra*. But see *Venner v. Futvoye*, (1863), 13 L. C. R. 307. So it has been held that the fact that the bill was overdue when indorsed does not make presentment unnecessary. — *Davis v. Dunn*, (1850), 6 U. C. Q. B. 327. See § 23, *supra*.

**When no place specified. If place specified. Neglect. Delivery on payment. 93.** When no place of payment is specified in the bill or acceptance, presentment for payment is not necessary in order to render the acceptor liable. 2. When a place of payment is specified in the bill or acceptance, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures, but if any suit or action be instituted thereon before presentation the costs thereof shall be in the discretion of the Court. 3. When a bill is paid the holder shall forthwith deliver it up to the party paying it.

Imp. § 52. For comparison of this section with § 183, *infra*, and for cases which by analogy give an indication of the effect of this section, see note to § 183, *infra*.

**Time for presentment. Parties in different places. Excuses for delay. 94.** Where the address of the acceptor for honour of a bill is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity. 2. Where the address of the acceptor for honour is in some place other than the place where it is protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him. 3. Delay in presentment or non-presentment is excused by any circumstance which would in case of acceptance by a drawee excuse delay in presentment for payment or non-presentment for payment.

Imp. § 67.

#### *Dishonour.*

**Non-payment on presentment. Excuse. Recourse. 95.** A bill is dishonoured by non-payment: a) When it is duly presented for payment and payment is refused or cannot be obtained; or, b) When presentment is excused and the bill is overdue and unpaid. 2. Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer, acceptor and endorsers accrues to the holder.

Imp. § 47. *When dishonoured.* — In Quebec under the Civil Code it is held that a bill or note becomes immediately exigible against the acceptor or maker upon his becoming bankrupt and therefore subject to the provisions of this section as to dishonour. — *La Banque Nationale v. Martel*, (1889), Q. R. 17 S. C. 97. See also *Lovell v. Meikle*, (1853), 2 L. C. Jur. 69; *Corcoran v. Montreal Abattoir Co.*, (1882), 6 Leg. News, 135. But see § 10, *supra*. No right of action accrues against drawer or indorser unless he also has become bankrupt. — *La Banque Nationale v. Martel*, *supra*. Prescription, however, does not begin to run until the time of maturity. — *Wintley v. Pinkerton*, (1892), Q. R. 2 S. C. 256. When, by the terms of the instrument, interest is payable at stated periods, the payment of any such instalment is subject to the provisions of this section in regard to dishonour, and therefore an immediate right of recourse as to that instalment arises against the drawer or indorser. — *Jennings v. Napanee Brush Co.*, (1884), 4 C. L. T. 595. Although the dishonour by non-payment of such instalment does not dishonour the



note as to future instalments of interest or principal, an indorsee with notice of such non-payment is not a holder in due course. — *Moore v. Scott*, (1906), 5 West. L. R. 8; s. c. (1907), 5 West. L. R. 381. See *Union Investment Co. v. Wells*, (1908), 39 S. C. R. 625. In an action on a bill or note payable in a particular place it is not necessary to show that there were not sufficient funds at the place named; all that is necessary even as against an indorser is to show presentment, non-payment, and notice of dishonour. — *McDonald v. McArthur*, (1883), 8 O. A. R. 553.

*The immediate right of recourse* given by this section is a right to notify the drawer or indorser, but not an immediate right of action. So it has been held that an action brought even against the acceptor before the expiration of the last day of grace, although after dishonour, is prematurely brought. — *Demers v. Rousseau*, (1892), Q. R. 1 S. C. 440; *Westaway v. Stewart*, (1908), 8 West. L. R. 907, aff'd., (1909), 10 West. L. R. 623, which followed the English case of *Kennedy v. Thomas*, (1894) 2 Q. B. 759, on the ground that where a colony had copied an English statute which had been construed by the English Court of Appeal, it was the duty of colonial courts to follow that decision, and distinguishing *Sinclair v. Robson*, *post*. In Ontario the opposite view has been taken. — *Sinclair v. Robson*, (1858), 16 U. C. Q. B. 211; *Ontario Bank v. Foster*, (1883), 6 Leg. News, 338. Accordingly it has there been held that the statute of limitations begins to run at dishonour. — *Bank of Toronto v. McBean*, (1900), 21 C. L. T. 44. But see *Edgar v. McGee*, (1882), 1 O. R. 287; *Falconbridge, Banking and bills of exchange*, p. 512. See §§ 42 *supra*, and 121 (b), and 162 *infra*.

**Notice of dishonour. Subsequent holder. Notice of non-payment. Notice to acceptor.** 96. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer, and each endorser, and any drawer or endorser to whom such notice is not given is discharged: Provided that: a) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission; b) Where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted. 2. In order to render the acceptor of a bill liable it is not necessary that notice of dishonour should be given to him.

**Imp. §§ 48, 52. Liability is conditional.** — The liability of the drawer or indorser is conditional upon the notice provided for in this section. Consequently, in Quebec, notice of dishonour to the drawer or indorser is not made unnecessary by his bankruptcy. — *Trottier v. Rivard*, (1903), Q. R. 23 S. C. 526. See also *Denenberg v. Mendelsohn*, (1903), Q. R. 23 S. C. 128, and *Molsons Bank v. Steel*, (1903), Q. R. 23 S. C. 316. See § 34. Nor by the bankruptcy of both drawer and indorser before maturity. — *La Banque Nationale v. Martel*, (1899), Q. R. 17 S. C. 97. Failure to notify an indorser of a default in payment of interest due, by the terms of the instrument, at a certain time, releases him from liability as to that instalment. — *Jennings v. Nepanee Brush Co.*, (1884), 4 C. L. T. 595. But not as to future instalments. — See *Union Investment Co. v. Wells*, (1908), 39 S. C. R. 625. The failure to give notice of dishonour by non-acceptance is not cured by notice of non-acceptance given with notice of non-payment. — *Gore Bank v. Craig*, (1857), 7 U. C. C. P. 344. See also *Jones v. Wilson*, (1813), 2 Rev. de Leg. 28.

*To whom notice must be given.* — Notice of dishonour is necessary to bind an indorser of a demand note as well as an indorser of one payable at a fixed time. — *Royal Bank v. Kirk*, (1907), 5 West. L. R. 432. An accommodation indorser, although irregular, is entitled to notice of dishonour. — *Merchants Bank v. Cunningham*, (1892), Q. R. 1 Q. B. 33; *Gore Bank v. Craig*, *supra*. See § 131. But a person who is interested in a bill to the knowledge of the holder, but whose name is not on it, is not entitled to notice of dishonour. — *Anderson v. Archibald*, (1872), 9 N. S. 88. An accommodation joint maker or acceptor, to the knowledge of the holder, however, not being an indorser, is not discharged by failure to give such notice. — *Hough v. Kennedy*, (1910), 13 West. L. R. 674. It has been so held even where no notice of dishonour was given to the payee and indorser for whose accommodation the note was given. — *Grant v. Winstanley*, (1871), 21 U. C. C. P. 257. But an accommodation maker or acceptor, to the knowledge of the holder, is released as a surety by delay in notice or other laches, on the part of the holder, which operates to impair the equitable remedy of the accommodation party against the party for whose accommodation the note was made or bill accepted. — *Canadian Bank of Commerce v. Green*, (1880), 45 U. C. Q. B. 81; *Hough v. Kennedy*, *supra*.

*Effect of discharge.* — Where the drawer or indorser of a bill is discharged for want of notice of dishonour, he is also discharged from any liability on the consideration for the bill. — *Hart v. McDougall*, (1892), 25 N. S. 38. And an indorser who pays the note or bill without notice of dishonour having been given him, or without legally waiving such notice of dishonour, cannot recover as against a prior or joint indorser although such indorser may have had due notice. — *Savaria v. Paquette*, (1899), Q. R. 20 S. C. 314, *semble*. See § 34, *supra*. See also § 162 *infra*.

**Notice. Time for. By holder or endorser. Personal representative. Two drawees.** 97. Notice of dishonour in order to be valid and effectual must be given: a) Not later than the juridical or business day next following the dishonour of the bill;

b) By or on behalf of the holder, or by or on behalf of an endorser, who at the time of giving it, is himself liable on the bill; c) In the case of the death, if known to the party giving notice, of the drawer or endorser, to a personal representative, if such there is and with the exercise of reasonable diligence he can be found; d) In case of two or more drawers or endorsers who are not partners, to each of them, unless one of them has authority to receive notice for the others.

*Imp. § 49 (1, 9, 11, 12). Time of giving notice.* — A notice properly addressed to an indorser and deposited in the post office nearest the place of presentment and dishonour, between 8 and 9 in the evening of the juridical day following, is a good notice within the meaning of this section, although not postmarked until the day after it was deposited. — *Wilson v. Pringle*, (1856), 14 U. C. Q. B. 230. See also *Brent v. Lees*, (1820), 2 Rev. de Leg. 335. See § 103.

*Notice on behalf of holder.* — Where a note is payable at a bank and is sent there for collection, protest may be secured and notice given by the bank as holder and will be good although the bank has no interest in the note other than an agent for collection. — *Wilson v. Pringle*, *supra*. See also *Girvan v. Price*, (1857), 8 N. B. 409; *Howard v. Godard*, (1860), 9 N. B. 452.

*Where party is dead.* — § 103. is apparently applicable only where the holder has no knowledge of such death, or cannot, with reasonable diligence, find a representative. — *Maclaren, Bills, notes, and cheques*, p. 272. If no administrator has as yet been appointed, a notice addressed to the deceased's last residence is good. — *Gillespie v. Marsh*, (1852), 1 U. C. C. P. 453, *semble*. It has further been held that where the indorser, a married woman, died intestate, a notice sent to her husband as executor, although not addressed to him at the former residence of the wife, which actually reached him at such residence, was binding on her separate estate although no letters of administration had as yet been taken out. — *Merchants' Bank v. Bell*, (1881), 29 Grant, 413. But where the notice of non-payment is addressed to no one by name, nor to any street or house, but merely "to the executrix or executor of the late Mr. Justice Jones, Toronto," such notice is not sufficient, it not having been actually received by the parties to be notified within the time limit imposed by this section. — *Semble*, *Bank of B. N. A. v. Jones*, (1850), 8 U. C. Q. B. 86. The actual receipt of the notice by the representative of the deceased indorser, during the juridical day following the day of dishonour, cures any defect in address. — *McKenzie v. Northrop*, (1872), 22 U. C. C. P. 383, distinguishing *Bank of B. N. A. v. Jones*, *supra*.

*Two or more drawers or indorsers.* — This section is, in this respect, contra to an important early dictum in Upper Canada. — See *Bank of Michigan v. Gray*, (1841), 1 U. C. Q. B. 422. See §§ 105—108, 162, *infra*.

**Notice. Earliest time. To whom. By agent. Manner. Misdescription. 98.** Notice of dishonour may be given: a) As soon as the bill is dishonoured; b) To the party to whom the same is required to be given, or to his agent in that behalf; c) By an agent either in his own name or in the name of any party entitled to give notice whether that party is his principal or not; d) In writing or by personal communication and in any terms which identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment. 2. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

*Imp. § 49 (2, 5, 7, 8, 12). When notice may be given.* — The notice of dishonour may be given although no right of action has as yet accrued. — *Westaway v. Stewart*, (1909), 10 West. L. R. 623. See note to § 95.

*To whom notice may be given.* — Where it appeared that throughout transactions in connection with a note and renewals thereof the indorser had left arrangement of all details to her husband, who was also an indorser, it was held that the husband became agent for the wife for the purpose of receiving notice of dishonour. — *Counsell v. Livingston*, (1902), 4 O. L. R. 340. But the delivery of notice to an outdoor servant, splitting firewood in the indorser's yard, and not known and proved to be an inmate of the indorser's family, with instructions to give same to the indorser, is not sufficient. — *Commercial Bank v. Weller*, (1848), 5 U. C. Q. B. 543, *semble*. As to where an indorser goes to fill an office, temporarily leaving his family in his old home, and notice is left there, see *Ryan v. Malo*, (1861), 12 L. C. R. 8. In Quebec, notice to the curator upon abandonment of property of indorser, is not notice to indorser. — *Denenberg v. Mendelsohn*, (1903), Q. R. 23 S. C. 128; *Molsons Bank v. Steel*, (1903), Q. R. 23 S. C. 316.

*By whom notice may be given.* — See § 97 (b), and note.

*Form of notice.* — See forms G and H of Schedule to this Act. What is sufficient notice, when facts are undisputed, is a question of law. — *Bank of U. C. v. Smith*, (1847), 4 U. C. Q. B. 483. A notice stating that the note was duly protested for non-payment necessarily implies presentment and non-payment. — *Blain v. Oliphant*, (1852), 9 U. C. Q. B. 473. And a notice that a foreign bill has been returned protested is a sufficient notice of non-acceptance, without sending a copy of the protest with the notice. — *O'Neil v. Perrin*, (1839), Rob. & Jos. Dig. 496. See also *Delaney v. Hall*, (1858), 3 N. S. 401, and *Wiedeman v. Guittard*, (1902), 1 O. W. R. 110. So where the note is payable at a particular bank, and the bank as holder states in notice to indorser that the note remains there unpaid, such statement necessarily implies presentment so far as presentment is necessary. — *Bank of U. C. v. Street*, (1846), 3 U. C. Q. B. 29. And where the note is payable at a particular place other than a bank, a notice sent by holder from



that place, stating that the note remains there unpaid, is sufficient, although it does not expressly state that there has been presentment and dishonour. — *Blinn v. Dixon*, (1848), 5 U. C. Q. B. 580; *Harris v. Perry*, (1858), 8 U. C. C. P. 407. The use of the words "not covered" in notice to the drawer of a cheque is equivalent to the use of the words "not paid." — *Queen v. Bank of Montreal*, (1886), 1 Ex. C. R. 154. A notice to the indorser, however, which does not expressly or impliedly state that the note has been presented and dishonoured but merely that it is overdue and unpaid, and that the holder looks to the indorser for indemnity, is not sufficient. — *Bank of Montreal v. Grover*, (1846), 3 U. C. Q. B. 27, distinguishing *Bank of U. C. v. Street*, *supra*. But a notice which, on its face, is insufficient, may by reason of special circumstances surrounding the whole transaction be sufficient. Thus the following notice was held to be good: "I beg to advise you that Mr. T. C. Livingston's note for £ 3,500 in your favour, and indorsed by yourself and wife and held by our estate, was due yesterday. As I have not received renewal, will you kindly see that the same is forwarded with cheque for discount as there is no surplus on hand?" — *Counsell v. Livingston*, *supra*. The following notice to the drawer of a cheque was held to be sufficient: "I am now advised that it (the cheque) has not yet been covered by the Bank of P. E. Island. In case of its being returned here unpaid, I deem it proper to notify you of circumstances, as I will be required in that event to reverse the entry and return it to the department." — *Queen v. Bank of Montreal*, *supra*. It was pointed out in this case that no notice of dishonour has been held bad in England for defect of form since 1841. The tendency of the modern decision, and the spirit of this Act is apparently in favor of holding any notice sufficient which would reasonably inform the party that the bill in which his name appears has been dishonoured. See *Maclaren, Bills, notes, and cheques*, p. 277. But see *Commercial Bank v. Allan*, (1894), 10 Man. 330. As to notice by telegram see *McLean v. Garnier*, (1882), 15 N. S. 276.

**Misdescription.** — The general rule prior to the adoption of this section was that a misdescription of the instrument in the notice did not invalidate the notice where there could be no reasonable doubt as to identity. The burden was on the defendant to show that there was another instrument of the same date and amount to which he was a party, or that he was otherwise actually misled by the notice. Thus a notice giving other particulars of the note but not mentioning the amount was held sufficient. — *Handyside v. Courtney*, (1857), 1 L. C. Jur. 250. So it was held, where the indorser was not actually misled by the error in the notice, that he was not discharged by a misstatement, in notice, of the amount of the note. — *Thompson v. Cotterell*, (1854), 11 U. C. Q. B. 185. Nor by giving the name of a party incorrectly. — *Girvan v. Price*, (1857), 8 N. B. 409. Nor by a misstatement of date when due. — *Thorn v. Sandford*, (1857), 6 U. C. C. P. 462; *Robinson v. Taylor*, (1843), 4 N. B. 198. Nor even where a note was duly presented and protested for non-payment when due, but notice on day following stated that the presentment and protest had occurred on the day of the notice. — *Cassidy v. Mansfield*, (1874), 24 U. C. C. P. 383; *Blinn v. Dixon*, (1848), 5 U. C. Q. B. 580; *Low v. Owen*, (1862), 12 U. C. C. P. 101.

**Form. Return of bill. Signature. Verbal supplement. 99.** In point of form: a) The return of a dishonoured bill to the drawer or an endorser is a sufficient notice of dishonour; b) A written notice need not be signed. 2. An insufficient written notice may be supplemented and validated by verbal communication.

Imp. § 49 (6, 7).

**Notice to agent. Effect on principal. Time for. 100.** Where a bill when dishonoured is in the hands of an agent he may himself give notice to the parties liable on the bill, or he may give notice to his principal, in which case the principal upon receipt of the notice shall have the same time for giving notice as if the agent had been an independent holder. 2. If the agent gives notice to his principal he must do so within the same time as if he were an independent holder.

Imp. § 49 (13). *Maclaren* says: "This and the following section lay down the rule for successive notices of dishonour, a practice not generally followed in Canada before the Act, where the usage has been for the holder at the time of dishonour to give notice to all the parties through the post office in accordance with the rules laid down in section 103." — *Maclaren, Bills, notes, and cheques*, p. 279. See note to § 101.

**Notice to antecedent parties. 101.** Where a party to a bill receives due notice of dishonour he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that a holder has after dishonour.

Imp. § 49 (14). As to time of notice see § 97. The different branches or agencies of a bank are to be regarded as separate and independent indorsers for the purpose of giving notices of dishonour. — *Queen v. Bank of Montreal*, (1886), 1 Ex. C. R. 154; *Steinhoff v. Merchants' Bank*, (1881), 46 U. C. Q. B. 25. See also note to § 103, *infra*.

**Benefit enures. Parties to whom. 102.** A notice of dishonour enures for the benefit: a) Of all subsequent holders and of all prior endorsers who have a right of recourse against the party to whom it is given, where given on behalf of the holder; b) Of the holder and of all endorsers subsequent to the party to whom notice is given, where given, by or on behalf of an endorser entitled under this Part to give notice.

Imp. § 49 (3, 4). See §§ 97 (b) and 101 and notes. Where a holder mails a notice to a deceased indorser at the place where the note was dated, being ignorant of the death of the indorser,

a subsequent indorser who takes up the paper even though he knew prior to the mailing of notice by the holder at maturity, that the first indorser was dead, has right of action by subrogation against the estate of the deceased indorser. — *Cosgrave v. Boyle*, (1881), 6 S. C. R. 165.

**Sufficiency of giving. Sufficiency of notice. Death of party. 103.** Notice of the dishonour of any bill payable in Canada shall, notwithstanding anything in this Act contained be sufficiently given if it is addressed in due time to any party to such bill entitled to such notice, at his customary address or place of residence or at the place at which such bill is dated, unless any such party has, under his signature, designated another place, in which case such notice shall be sufficiently given if addressed to him in due time at such other place. 2. Such notice so addressed shall be sufficient, although the place of residence of such party is other than either of the places aforesaid, and shall be deemed to have been duly served and given for all purposes if it is deposited in any post office, with the postage paid thereon, at any time during the day on which presentment has been made, or on the next following juridical or business day. 3. Such notice shall not be invalid by reason only of the fact that the party to whom it is addressed is dead.

*Effect of section on pre-existing law in general.* — Maclaren says: "The Imperial Act has no provision exactly corresponding to this subsection, nor has the Negotiable Instruments Law. It is taken in part from section 5 of chapter 123 R. S. C. (1886), which was first enacted in 1874 and applied to the whole of Canada; and in part from section 23 of that chapter which applied to Ontario alone, and article 2328 of the Civil Code which applied to Quebec. Heretofore in Canada the usage has been for the holder at the time of dishonour to send notice to all parties entitled to it, through the post, addressed to them at the place at which the bill or note is dated. By section 104 when such a notice is addressed and posted, the sender is deemed to have given due notice, and by the present section such notice is sufficient. It is not likely in such a case where the notice does not reach the indorser that he will be held to have "received due notice" within the meaning of section 101, so as to make the delay run as to notice to antecedent parties; but the miscarriage being due to his own fault or neglect he might be held responsible under certain circumstances." — Maclaren, *Bills, notes, and cheques*, pp. 82—83. But in New Brunswick, before the Dominion Act of 1874 *supra*, it was held that a posted notice addressed to the drawee at the place where the bill was dated, was not valid in the absence of proof that a notice sent to that office would reach him. — *Balloch v. Binney*, (1847), 5 N. B. 440. Prior to the adoption of this section, it was held that the holder must use due diligence in obtaining the address of the indorser and in giving him notice of dishonour. Whether or not such due diligence was used, was a mixed question of law and fact. — *Leith v. O'Neill*, (1860), 19 U. C. Q. B. 233. The purpose of this section was to simplify the giving of notice and to relieve the holder of the uncertainty of the rule requiring due diligence. — *Cosgrave v. Boyle*, (1881), 6 S. C. R. 165.

*Who may give notice by post.* — Under the prior rule it was held that where the holder and indorser resided at the same post-office and where there was no local delivery, that a notice by depositing in that post-office was not sufficient. — See *Taylor v. Grier*, (1858), 17 U. C. Q. B. 222, and *Chapman v. Bishop*, (1852), 1 U. C. C. P. 432. But under this section the notice is sufficiently given if deposited, properly addressed, in any post-office whether or not both parties reside at that same post-office. — *Merchants' Bank v. McNutt*, (1883), 11 S. C. R. 126.

*In what post-office notice must be deposited.* — Prior to the adoption of this section, and a fortiori under this section, it is not necessary that the notice be deposited in the post-office nearest the place of presentment and dishonour. It is sufficient if deposited properly addressed and within the prescribed time, at any post-office regularly connected with the Canadian mail system, whether in Canada or not. — *Taylor v. Grier*, *supra*; *Commercial Bank v. Eccles*, (1847), 4 U. C. Q. B. 336; *Howard v. Sabourin*, (1854), 5 L. C. R. 45.

*To what address notice may be mailed.* — (1) *Customary address or place of residence.* — A notice of non-payment of a note sent to an indorser, addressed to him in "York Township" in which he resided, there being no evidence as to whether there were one or more post-offices in that township, nor any proof that a letter for any other purpose would usually have been addressed in any other manner is sufficient as a notice sent to his place of residence. — *Bank of U. C. v. Bloor*, (1849), 5 U. C. Q. B. 619. But a notice to an indorser at St. John addressed, "Mr. J. Duff-near Blake's mill, Nashawaak" is not sufficient without showing that the letter would probably reach him. — *Robinson v. Duff*, (1843), 4 N. B. 206. And where the holder of a note knows the name of the indorser, but the notary employed by the holder to protest the note, not being able to make out the signature, makes a facsimile of the signature of the indorser upon an envelope containing notice of dishonour, and addresses same to the customary address of the indorser, the signature not being readily identified, and the notice not being actually received, such notice is insufficient. — *Baillie v. Dickson*, (1882), 7 O. A. R. 759. A notice of protest addressed to a lady as "sir" instead of "madam" is not sufficient. — *Seymour v. Wright*, (1852), 3 L. C. R. 454. (2) *Place at which bill dated.* — Notice addressed to any party at such place is sufficient, no other place being designated, even though the holder may strongly suspect or even know the customary address or place of residence of the party to be elsewhere. — *Cosgrave v. Boyle*, (1881), 6 S. C. R. 165, *semble*; *Howard v. Sabourin*, *supra*. See Maclaren, pp. 282, 283, *supra*. (3) *Place*



*designated by party under his signature.* — The place may be designated by an agent of the party as well as by the party himself. So where there is evidence that the words "Toronto P. O." were placed under the name of the indorser as his address, by the indorsee, with the knowledge and consent of the indorser, a notice mailed to that address is sufficient. — *Hay v. Burke*, (1889), 16 O. A. R. 463. And such notice is sufficient even though the person giving the notice knows or has reason to believe that such place is not the residence or place of business of the party. — *Hay v. Burke*, *supra*, citing *Cosgrave v. Boyle*, *supra*. Referring to *Cosgrave v. Boyle*, the Court further said, "It establishes the proposition that apart from the special Act of Parliament, the question is always one of due diligence on the part of the holder, having regard to the consideration of mercantile convenience. . . . In accordance with the reasoning in that case, I think mercantile convenience requires that the holder of a bill or note acting in good faith, may safely assume that the address written under the signature of any of the parties to it, was put there either in pursuance of the statute, or as the result of correct information obtained to further the negotiable character of the instrument, and that the inconvenience would be intolerable if bankers and others were obliged at their peril to inquire into the correctness of such addresses or into the circumstances under which they were written." — *Hay v. Burke*, *supra*. Contra to this dictum, however, is a later case in Quebec in which it was held that if a wrong address of an indorser is written under his name and no proof is given as to who wrote it, a notice sent to such address, not being the place where the instrument is dated, is not sufficient. — *Bank Jacques Cartier v. Gagnon*, (1894), Q. R. 5 S. C. 499. It had been held prior to the adoption of this section that where the maker sends the note after indorsement by the defendant, to the plaintiff bank for discount, and the messenger gives a wrong address for the indorser, that the plaintiff bank exercises due diligence in mailing notice to the defendant at the address so given, on the ground that the messenger is the agent of the indorser as well as of the maker. — *Vaughan v. Ross*, (1852), 8 U. C. Q. B. 506. So where an indorser for the accommodation of maker, gave the note back to the maker and maker discounted same, it was held that the indorser gave authority to the maker to consummate the indorsement by delivery and consequently gave the maker implied authority to bind the indorser by the address which he gave to the holder upon the discounting of the note. Accordingly a notice mailed to such address was sufficient. — *McMurrich v. Powers*, (1853), 10 U. C. Q. B. 481. Following *Hay v. Burke*, *supra*, it would seem that the same conclusion would follow under this section. But see *contra*, *Merchants' Bank v. Cunningham*, (1892), Q. R. 1 Q. B. 33. The words "under his signature" do not mean "below his signature" but mean that the address shall be written so that the signature covers it. — *Bank Jacques Cartier v. Gagnon*, *supra*.

*When the notice must be given.* — A notice mailed between eight and nine in the evening of the day after protest is sufficient, although the postmark is of the day following. — *Wilson v. Pringle*, (1856), 14 U. C. Q. B. 230. See also § 97 (a), *supra*. Prior to the adoption of this section it was held that where, on account of the infrequency of the post, a notice mailed on the day after dishonour would not have reached the indorser for several days, a notice sent by messenger so as to reach the indorser before he could have received the notice had it been so mailed, was sufficient as showing due diligence. — *Chapman v. Bishop*, (1852), 1 U. C. C. P. 432. It would seem, however, that a different result would follow from § 97 and the present section of this Act, which apparently require that notice be given not later than the day following presentment and dishonour and provide that posting the notice in accordance with the provision of the present section shall constitute the giving of such notice. See also § 105, *infra*.

*Error in address cured by actual receipt within prescribed time.* — A letter giving notice of dishonour of a bill although, from misdirection, it has not reached its destination so soon as it otherwise would have, is, nevertheless, a sufficient notice, if, being posted sooner than was necessary, it has in fact been received within the period allowed by the statute for giving notices of dishonour. — *Bank of B. N. A. v. Ross*, (1843), 1 U. C. Q. B. 199. See also *Mitchell v. Browne*, (1865), 9 L. C. Jur. 168.

*Postage must be prepaid.* — A note dated at Montreal, payable in Albany, New York, was protested there, and notice addressed to indorser at Montreal, was held sufficient as to form but invalid because it did not appear that postage was prepaid. — *Howard v. Sabourin*, (1854), 5 L. C. R. 45.

*Notice where party to whom it is addressed is dead.* — *Maclaren* says: "The last clause was added in harmony with the decision of the Supreme Court in the case of *Cosgrave v. Boyle*, (1881), 6 S. C. R. 165." — *Maclaren, Bills, notes, and cheques*, p. 282. In that case *Ritchie, C. J.*, said, "I am, therefore, not prepared to say that if the bank had known of the death of *Boyle* a notice addressed as this was, would not have been sufficient, but, as they did not know, the notice, in my opinion was clearly good." See note to § 97 (c), *supra*.

*Proof of giving of notice.* — The plaintiff must make out at least a *prima facie* case that the notice has been given. Thus even where the defendant had not testified to the non-receipt of notice, but the notary who had protested the note stated first that the notice had been given, but on referring to his book of notarial entries and finding no notarial charges, stated that he felt "rather staggered," the court refused to disturb a verdict for the defendant on the ground that not even a *prima facie* case was established. — *McDougall v. Wordsworth*, (1858), 8 U. C. C. P. 400. A statement in a certificate of protest that notice of dishonour has been duly given is *prima facie* evidence of the giving of such notice. See §§ 11 and 12. But this presumptive

evidence is not sufficient in the face of a denial by the indorser of the receipt of the notice, to sustain a verdict that such notice has been given. — *Ontario Bank v. Burke*, (1885), 10 O. P. R. 561. To rebut the inference arising from such denial by indorser, it is not, however, necessary that the party claiming to have mailed same should have a personal recollection of having deposited that particular letter in the mail. So where the notary's clerk testifies that he has no doubt of having mailed the notice to the address given by the indorser, from the statement to that effect in the certificate of protest, which is in his handwriting, from the entries in his notarial ledger which is produced, and which contains entries of the day and hour of mailing such notice, and from his practice of making these entries just before he takes the notices over to the post-office, this is held to be sufficient evidence of mailing such notice, and a new trial will be granted after verdict for defendant, on a plea of no notice, on the ground that the verdict is contrary to the evidence. — *Merchant's Bank v. McDougall*, (1879), 30 U. C. C. P. 236. See, as to bills payable outside of Canada, § 162.

**Miscarriage in post service. 104.** Where a notice of dishonour is duly addressed and posted, as provided in the last preceding section, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

Imp. § 49 (15). See note to § 103. Falconbridge says: "It is not clear, however, that the words 'as provided in the last preceding section' do not qualify 'addressed' as well as 'posted.' If they do, then sec. 104 must be confined to a notice which falls within the provisions of sec. 103, and does not apply to a case where a notice is addressed to the indorser at the place where he is in fact, but not being an address expressly authorized by sec. 103, and is lost in the post office. Such a case, if the words in question are to be so construed, is not provided for by the Act, and would have to be decided according to the common law of England (sec. 10)." — Falconbridge, *Banking and bills of exchange*, pp. 528, 529. It would seem, however, that in the case suggested the result would, at common law, be the same, as in the cases specifically provided for by this section. — See *Woodcock v. Houldsworth*, (1846), 16 M. & W. 124; *Mackay v. Judkins*, (1858), 1 F. & F. 208; *Renwick v. Tighe*, (1860), 8 W. R. 391; *Packer v. Gordon*, (1806), 7 East. 385; *Dunlop v. Higgins*, (1848), 1 H. L. Cas. 380. Further "By R. S. C. c. 66, s. 83, as soon as any letter is deposited in the post office, it ceases to be the property of the sender and becomes the property of the person to whom it is addressed. It is in accordance with principle that the loss should fall on the owner. — See *Bank of U. C. v. Smith*, (1846), 3 U. C. Q. B. 358, s. c. (1847), 4 U. C. Q. B. 483; *Taylor v. Grier*, (1858), 17 U. C. Q. B. 222; *Shannon v. Hastings M. Ins. Co.*, (1877), 2 O. A. R. 81; *Delaporte v. Madden*, (1872), 17 L. C. Jur. 29." — *Maclaren, Bills, notes, and cheques*, p. 286.

**Excuse for delay. Diligence. 105.** Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. 2. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

Imp. § 50. *Maclaren* says: "In England and the United States, where no provision exists similar to that in section 103, recognizing as sufficient a notice posted to any party addressed to the place where the bill is dated, if no other address is given, circumstances would excuse delay, which would not be sufficient in Canada. Notice does not require to be given until after presentment and dishonour. Where delay in presentment is excused, a notice mailed the following day is regular. The only circumstances likely to arise in Canada to cause excusable delay in giving notice, would be the death or sudden illness of the holder, or some accident to the person making out the notices, or to the messenger charged with taking them to the post office." — *Maclaren, Bills, notes, and cheques*, p. 287. See as to excuses for delay under the earlier rule requiring in all cases reasonable diligence. — *Tarratt v. Wilmot*, (1849), 6 N. B. 353; *Bank of N. B. v. Knowles*, (1843), 4 N. B. 219. As to liability of a bank to the holder for negligent failure to give notice within reasonable time after the cause of delay ceased to operate, and where notice was not dispensed with, see *Steinhoff v. Merchants' Bank*, (1881), 46 U. C. Q. B. 25.

**Dispensed with. Reasonable diligence. Waiver. Time of. 106.** Notice of dishonour is dispensed with: a) When after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or endorser sought to be charged; b) By waiver express or implied. 2. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice.

Imp. § 50. As to reasonable diligence dispensing with notice, see note to § 105, *supra*.

**Waiver.** — As to express waiver at time of drawing or indorsing, see § 34 (b) *supra*.

**Waiver by express promise, or admission after failure.** — An express promise to pay with knowledge of default in giving notice is a waiver of such default. — *Bank of B. N. A. v. Ross*, (1843), 1 U. C. Q. B. 199; *Bank of U. C. v. Cooley*, (1834), 4 U. C. Q. B. (O. S.) 17; *Beckett v. Cornish*, (1847), 4 U. C. Q. B. 138; *Ross v. Wilson*, (1812), 2 Rev. de Leg. 28; *McLaurin v. Seguin*, (1896), Q. R. 12 S. C. 63. See also *Ranger v. Aumais*, (1903), 5 Q. P. R. 450. Such an express promise is held binding as being based upon a good moral consideration, as in the case of a promise by a debtor to pay a debt barred by the statute of limitations, or as amounting to a waiver of an implied condition in the liability of indorser. — *Brown v. Marsh*, (1852), 1 U. C. C. P. 438. In this case *Macaulay, C. J.*, said: "Although due notice has now become a settled doc-



trine and virtually constitutes a part of the individual or implied undertakings of indorsers, unless excused or dispensed with on some peculiar ground, in the present case I find that the consideration was sufficient to support the express promise, as the plaintiff would have been entitled to recover on original or common law principles had not a legal maxim respecting notice of dishonour interposed, it being in the power of the party protested thereby to dispense with its operation." See also *Gillespie v. Marsh*, (1852), 1 U. C. C. P. 453; *Shaw v. Salmon*, (1860), 19 U. C. Q. B. 512. However, such a promise, although conditional, and although a promise to pay in land, has been held to constitute a waiver, not on the ground of its being a contract stipulation based on good consideration, but on the ground of estoppel. — *Burke v. Elliott*, (1857), 15 U. C. Q. B. 610. And it is held that such a promise made after action brought will avail the plaintiff in the same manner as if made before. — *Burke v. Elliott*, *supra*; *McCuniffe v. Allen*, (1848), 6 U. C. Q. B. 384. The promise must be clear and amount to an admission of holder's right as against promisor or of the duty of promisor to pay, and must, from the words used and all the circumstances be clearly referable to the particular note in question. Thus, where the plaintiff's agent testified that after the maturity of a bill, in conversation with him respecting the whole liability, which included liability on notes of the non-payment of which due notice had been given, defendant appeared willing to pay and said that if he and his brother (the acceptor) got time, it would be all right, but made no promise specifically mentioning this bill, it was held that this evidence was not sufficient to warrant a verdict for the plaintiffs. — *Bank of Montreal v. Scott*, (1864), 24 U. C. Q. B. 115. See also, as to what evidence is sufficient to establish such waiver by subsequent promise, *Reed v. Mercer*, (1866), 16 U. C. C. P. 279.

*Waiver by implied promise or admission after failure to give notice.* — The promise need not be express, but circumstances showing clearly an admission of liability on the part of indorser, with reference to the particular bill or note in question, are sufficient. So where the indorser goes to the holder when the note is due, offers renewal note and asks for time in which to pay, such conduct amounts to a waiver of due notice. — *Smith v. Lang*, (1902), 22 C. L. T. 418. But a statement to the holder by the indorser of a dishonoured note that he will see the maker about it and his subsequent statement that he has seen the maker who has promised to pay as soon as he can, with a request not to "crowd the note" are not in themselves sufficient evidence of such waiver. — *Britton v. Milsom*, (1892), 19 O. A. R. 96. See also *Bank of Montreal v. Scott*, *supra*, *semble*. Promises to pay, although not clear or definite enough to constitute an express or implied waiver, may nevertheless amount to evidence that the notice has been actually given and received. See *Bank of B. N. A. v. Ross*, *supra*; *McCuniffe v. Allen*, *supra*; *Brown v. Marsh*, *supra*; *Britton v. Milsom*, *supra*.

*Knowledge of facts giving rise to defence essential.* — It seems that a subsequent acknowledgment of liability, express or implied, to constitute a waiver, must be made with full knowledge of the facts which give rise to the defence of no notice of dishonour. — *Murray v. Ayer*, (1909), 6 East. L. R. 509; *McFatrige v. Williston*, (1892) 25 N. S. 11; *Bank of U. C. v. Cooley*, *supra*, *semble*. But see *McLaurin v. Seguin*, (1897), Q. R. 12 S. C. 63. Where a promise to pay, in writing, dated the day after the note fell due (April 30) and promising to pay the note if same was not paid by May 15th. was held to be a waiver of protest although there was no finding of knowledge on the part of the promisor that holder failed to have note protested.

*Waiver before notice due.* — Notice of dishonour may be waived or dispensed with before as well as after maturity. As to evidence sufficient to establish such waiver by prior dispensation, see *Reed v. Mercer*, (1866), 16 U. C. C. P. 279. In such a case it is necessary to plead particularly that notice is dispensed with, contrary to the rule which applies where the alleged waiver has taken place after the time for notice has expired. — *Shaw v. Salmon*, (1860), 19 U. C. Q. B. 512. Such waiver before maturity may be by representations calculated to induce and inducing holder to refrain from giving such notice, as well as by agreement, express or implied, not to insist upon the required notice. Thus, where the indorser before maturity wrote a letter to the holder, admitting his liability and stating that the maker had become bankrupt, and that indorser had procured confession of judgment from the maker, the letter being written for the purpose of throwing the holder off his guard and inducing him to refrain from giving notice of non-payment, such letter was held to amount to a waiver of the required notice. — *Beckett v. Cornish*, (1847), 4 U. C. Q. B. 138.

*Who may waive notice.* — Waiver of notice of dishonour by curator in Quebec does not bind the insolvent. — See note to § 110 and cases cited. For other cases applying the doctrine of waiver see note to § 92.

**Dispensed with: same person; fictitious person; presented to drawer; no obligation; countermand. 107.** Notice of dishonour is dispensed with as regards the drawer where: a) The drawer and drawee are the same person; b) The drawee is a fictitious person or a person not having capacity to contract; c) The drawer is the person to whom the bill is presented for payment; d) The drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill; e) The drawer has countermanded payment.

Imp. § 50. See § 26 and note. Prior to the adoption of this section it was held that where a drawer had no effects in the hands of the drawee or any reasonable grounds for expecting he would have or that the bill would be honoured, he might be sued without previous notice of dishonour. — *Knapp v. Bank of Montreal*, (1850), 1 L. C. R. 252; *Stayner v. Howatt*, (1882), 15 N. S. 267.

**Dispensed with. Fictitious person. Presented to endorser. Accommodation.** 108. Notice of dishonour is dispensed with as regards the endorser where: a) The drawee is a fictitious person or a person not having capacity to contract, and the endorser was aware of the fact at the time he endorsed the bill; b) The endorser is the person to whom the bill is presented for payment; c) The bill was accepted or made for his accommodation.

Imp. § 50. An indorser is entitled to notice of dishonour whether or not the drawee has funds in his hands. — *Griffin v. Philips*, (1821), 2 Rev. de Leg. 30. Notice of dishonour to the indorser is not dispensed with when a note becomes exigible in the Province of Quebec before the date of maturity, under Art. 1092, Civil Code on account of insolvency of both maker and indorser. — *Banque Nationale v. Martel*, (1899), Q. R. 17 S. C. 97. See note to § 95.

#### *Protest.*

**Necessity of.** 109. In order to render the acceptor of a bill liable it is not necessary to protest it.

Imp. § 52.

**Dispensed with.** 110. Protest is dispensed with by any circumstances which would dispense with notice of dishonour.

Imp. § 51. See §§ 106, 107, and 108, *supra*, and notes. **Waiver.** — Thus a promise to pay made after maturity of note amounts to a waiver of protest. — *Goldie v. Maxwell*, (1841), 1 U. C. Q. B. 424, *McLaurin v. Seguin*, (1896), Q. R. 12 S. C. 63. But a waiver of protest has been held not to be necessarily an admission that the instrument is genuine or that the party is liable thereon. — *Royal Bank v. Maughan*, (1908), 12 O. W. R. 899. A waiver of protest by a curator in Quebec does not bind the insolvent. — *Denenberg v. Mendelsohn*, (1903), Q. R. 23 S. C. 128; *Molsons Bank v. Steel*, (1903), Q. R. 23 S. C. 316, overruling *In re Boutin*, (1897), Q. R. 12 S. C. 186. See also note to § 92, *supra*.

**Delay excused. Diligence.** 111. Delay in noting or protesting is excused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. 2. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Imp. § 51. See §§ 91 and 105, *supra*, and notes.

**Foreign bill, non-acceptance. Non-payment. Balance. Discharge.** 112. Where a foreign bill appearing on the face of it to be such has been dishonoured by non-acceptance it must be duly protested for non-acceptance. 2. Where a foreign bill which has not been previously dishonoured by non-acceptance is dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment. 3. Where a foreign bill has been accepted only as to part it must be protested as to the balance. 4. If a foreign bill is not protested as by this section required the drawer and endorsers are discharged.

Imp. §§ 44, 51. As to what is a foreign bill, see § 25, *supra*. See also § 162.

**Protest of inland bill. Quebec.** 113. Where an inland bill has been dishonoured, it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment as the case may be; but it shall not, except in the Province of Quebec, be necessary to note or protest an inland bill in order to have recourse against the drawer or endorsers.

Imp. § 51. As to what is an inland bill, see § 25, *supra*. For form of the noting of a bill for non-acceptance, see Form A in Schedule to this Act. For cases where protesting for non-acceptance is compulsory, see §§ 117 and 147, *infra*.

**Discharge in default of protest. Protest unnecessary.** 114. In the case of an inland bill drawn upon any person in the Province of Quebec or payable or accepted at any place in the said Province the parties liable on the said bill other than the acceptor are, in default of protest for non-acceptance or non-payment as the case may be, and of notice thereof, discharged, except in cases where the circumstances are such as would dispense with notice of dishonour. 2. Except as in this section provided, where a bill does not on the face of it appear to be a foreign bill, protest thereof in case of dishonour is unnecessary.

Imp. § 51 (1). Prior to the adoption of this section it was held that where a bill or note was payable in Lower Canada, the law of that Province governed as to the sufficiency of notice of dishonour, although the indorser resided in upper Canada and made the indorsement there. — *City Bank v. Ley*, (1843), 1 U. C. Q. B. 192; *Smith v. Hall*, (1847), 3 U. C. Q. B. 315.

**Subsequent protest for non-payment.** 115. A bill which has been protested for non-acceptance, or a bill of which protest for non-acceptance has been waived, may be subsequently protested for non-payment.

Imp. § 51.



**Protest for better security. 116.** Where the acceptor of a bill suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and endorsers.

Imp. § 51. In Quebec, under the Code, upon the insolvency of the acceptor or maker, a bill or note becomes immediately exigible as against him. — *Lovell v. Meikle*, (1853), 2 L. C. Jur. 69. And where both acceptor and indorser become insolvent the bill is immediately exigible as against both, but protest and notice thereof are not thereby dispensed with. — *Banque Nationale v. Martel*, (1899), Q. R. 17 S. C. 97. See notes to §§ 95, 96, and 106, *infra*.

**Acceptance for honour. Protest for non-payment. 117.** Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need. 2. When a bill of exchange is dishonoured by the acceptor for honour, it must be protested for non-payment by him.

Imp. § 51. As to acceptance for honour, see §§ 147 — 152, *infra*.

**Noting equivalent to protest. 118.** For the purposes of this Act, where a bill is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding.

Imp. § 93.

**Noting or protest. Extending protest. 119.** Subject to the provisions of this Act, when a bill is protested the protest must be made or noted on the day of its dishonour. 2. When a bill has been duly noted, the formal protest may be extended thereafter at any time as of the date of the noting.

Imp. § 51, 93. See Form D of Schedule to this Act for a form for extension of a certificate of protest where the bill has been duly noted.

**Protest on copy or particulars. 120.** Where a bill is lost or destroyed, or is wrongly or accidentally detained from the person entitled to hold it, or is accidentally retained in a place other than where payable, protest may be made on a copy or written particulars thereof.

Imp. § 51.

**Place of protest. Where bill returned. Time when. 121.** A bill must be protested at the place where it is dishonoured, or at some other place in Canada situate within five miles of the place of presentment and dishonour of such bill: Provided that: a) When a bill is presented through the post office and returned by post dishonoured, it may be protested at the place to which it is returned, not later than on the day of its return or the next juridical day; b) Every protest for dishonour, either for non-acceptance or non-payment may be made on the day of such dishonour, and in case of non-acceptance at any time after non-acceptance, and in case of non-payment at any time after three o'clock in the afternoon.

Imp. § 51. Subdivision (b) of this section has been relied upon in Ontario as establishing a difference between the English and Canadian law with the result that an action brought by holder on a writ sued out at 5:00 P. M. on the afternoon of the last day of grace was not deemed premature. — *Sinclair v. Robson*, (1858), 16 U. C. Q. B. 211. But in the late case of *Westaway v. Stewart*, (1908), 8 West. L. R. 907, *aff'd.*, (1909), 10 West. L. R. 623, this distinction was expressly repudiated, the Court holding that in such a case the action was prematurely brought. See note to § 95, *supra*. In *Westaway v. Stewart*, *supra*, the Court said: "But [subsection (b) of sec. 121 of our Bills of Exchange Act is not contained in the English Act, and the effect of this subsection has to be considered. According to the law of England a bill or note may be presented for payment at any time within reasonable hours of the last day of grace, and, should payment be refused, the bill or note may be protested for non-payment. Yet the acceptor, or maker, as the case may be, has the whole of such day of grace within which to pay. This is the law as laid down in *Kennedy v. Thomas*, (1894) 2 Q. B. 759. In the face of sec. 42 of our Bills of Exchange Act, I cannot see that subsection (b) has any greater effect than to extend the time for presenting a bill or note till 3 o'clock of the last day of grace. I am of opinion that this subsection does not effect any other change. Under sec. 42 of our Bills of Exchange Act a bill (or note) is payable on the last day of grace. This is the same as sec. 14 of the English Bills of Exchange Act. Lord Justice Lopes in *Kennedy v. Thomas*, at p. 763, after referring to the provision in the English Act, says: 'I read that as meaning that the bill is due and payable at the end of the last day of grace, and that no cause of action by the holder against the acceptor exists until the end of the third day of grace. If he has not the whole of the third day during which to meet the bill, I cannot see how he gets three days of grace.' The decision in *Sinclair v. Robson*, if given effect to, would cause this section to read that the bill is due and payable at or before 3 o'clock. The Act 14 & 15 Vic. c. 94, the Act mentioned in *Sinclair v. Robson*, did not contain a provision similar to that of our section 42. If it had, the result in *Sinclair v. Robson* might have been different. This provision was first introduced in 1872."

**Contents of protest. Person. Place. Reason. Proceeding. Excuse. 122.** A protest must contain a copy of the bill, or the original bill may be annexed thereto, and the protest must be signed by the notary making it, and must specify: a) The person at whose request the bill is protested; b) The place and date of protest; c) The cause or reason for protesting the bill; d) The demand made and the answer given, if any; or, e) The fact that the drawee or acceptor could not be found.

Imp. § 51. This method of protesting was that followed in Ontario before the Act. — R. S. C. (1886), c. 123, § 24 and Schedule A. In Quebec the bill and indorsements were copied in the protest, which was made in duplicate. — C. S. L. C. c. 64, §§ 11, 12; R. S. C. (1836), c. 123, § 29, and Schedule B.

*Necessity of official seal.* — A seal is not necessary under this Act. This was the rule in Ontario and Quebec prior to the Act. — *Goldie v. Maxwell*, (1841), 1 U. C. Q. B. 424, *semble*; *Russell v. Crofton*, (1852), 1 U. C. C. P. 428; R. S. C. (1886), c. 123, Schedules A and B. But in Nova Scotia the seal was held to be necessary. — *Merchants' Bank v. Spinney*, (1879), 13 N. S. 87.

*Not necessary to state the time of day of protest.* — It is necessary to state in the certificate of protest that the protest was made after three o'clock in the afternoon of the day of dishonour. See Forms in Schedule to this Act. Prior to the Act of 1851, a certificate of protest, which did not state that the protest was made in the afternoon of the day it bore date, was invalid. — *Joseph v. Belisle*, (1851), 1 L. C. R. 244. See §§ 11 and 12, *supra*.

**Official when notary is not accessible. 123.** Where a dishonoured bill is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any justice of the peace resident in the place may present and protest such bill and give all necessary notices and shall have all the necessary powers of a notary in respect thereto.

Imp. § 94. This section declares the law as it previously existed in Lower Canada and Quebec. — C. S. L. C., c. 64, § 24; C. C. Art. 2304.

*Where notary disqualified.* — A notary who is one of the indorsers on a promissory note is not entitled to act as notary to make the protest, even where he substitutes the name of another person for his own and purports to make the protest at the request of the person so substituted. — *Pelletier v. Brosseau*, (1890), M. L. R. 6 S. C. 331. See also § 13, *supra*.

*When clerk may act for notary.* — "In England, Canada, and most of the United States, bills, as a rule, are not presented by the notary in person, but by his clerk. Where such a usage prevails it will be recognized. So held in Ontario by Galt, C. J., in *Boas v. McCartney*, Feb. 18th, 1889; affirmed by Queen's Bench Divisional Court, May 23d, 1889 (not reported)." — *Maclaren, Bills, notes, and cheques*.

**Expenses. Fees. 124.** The expense of noting and protesting any bill and the postages thereby incurred, shall be allowed and paid to the holder in addition to any interest thereon. 2. Notaries may charge the fees in each Province heretofore allowed them.

**Forms. Contents. 125.** The forms in the Schedule to this Act may be used in noting or protesting any bill and in giving notice thereof. 2. A copy of the bill and endorsement may be included in the forms, or the original bill may be annexed and the necessary changes in that behalf made in the forms.

Imp. § 94.

**When notice of protest shall be given. 126.** Notice of the protest of any bill payable in Canada shall be sufficiently given and shall be sufficient and deemed to have been duly given and served, if given during the day on which protest has been made or on the next following juridical or business day, to the same parties and in the same manner and addressed in the same way as is provided by this Part for notice of dishonour.

#### *Liabilities of parties.*

**Equitable assignment. 127.** A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument.

Imp. § 53. The rule of this section was the law in Ontario before the enactment of this section. — *Caldwell v. Merchants' Bank*, (1876), 26 U. C. C. P. 294; *Lamb v. Sutherland*, (1875), 37 U. C. Q. B. 143; *Hall v. Prittie*, (1890), 17 O. A. R. 306. In Quebec, however, it was held that a cheque was a transfer of so much of the drawer's funds in the bank, and of itself gave the holder a right of action against the bank. — *Marler v. Molsons Bank*, (1879), 23 L. C. Jur. 293. But this section has abrogated the rule which previously obtained in Quebec. — *Silverstone v. Bank of Hochelaga*, (1901), 21 C. L. T. 309. The Ontario rule now prevails throughout Canada, and applies to cheques as well as to other bills. — *Re Commercial Bank*, (1894), 10 Man. 171. Where, however, a bill is drawn on the understanding of all the parties that it is to operate



as an assignment of a certain fund, it has been held that it will operate as such. — *Lane v. Dugannon*, (1892), 22 O. R. 264. And where a bill is delivered to the drawee, who holds funds with which to pay, and he communicates to the payee the fact that he has funds of the drawer on hand to pay a pre-existing debt, due from the drawer to the payee, it has been held to operate either as an equitable assignment or as an irrevocable trust so as to be effective in equity without an acceptance. — *Trunkfield v. Proctor*, (1901), 2 O. L. R. 326.

**Engagement by acceptance. 128.** The acceptor of a bill, by accepting it, engages that he will pay it according to the tenor of his acceptance.

Imp. § 54. A collateral contract between acceptor and drawer that upon the happening of a contingency the bill shall be altered so as to postpone the day of payment, is available to the acceptor as an equitable defence against a purchaser of the bill with notice. — *Goldstein v. Gillis*, (1909), 10 West. L. R. 109.

**Estoppel. Genuineness and authority. Capacity of drawer. Payee and capacity. 129.** The acceptor of a bill by accepting it is precluded from denying to a holder in due course: a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill; b) In the case of a bill payable to drawer's order, the then capacity of the drawer to endorse, but not the genuineness or validity of his endorsement; c) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to endorse, but not the genuineness or validity of his endorsement.

Imp. § 54. The drawee either by accepting or paying without acceptance a bill drawn upon him is precluded from denying the genuineness of the drawer's signature. — *Union Bank v. Bank*, (1880), 24 L. C. Jur. 309; *Bank v. The King*, (1907), 38 S. C. R. 258. But the drawee is not precluded from denying the genuineness of an indorsement. — *Ryan v. Bank*, (1887), 14 O. A. R. 533. As to fictitious payees, see § 21.

**Drawer. Engages acceptance and compensation. Estoppel as to payee. 130.** The drawer of a bill, by drawing it: a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or any endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken; b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse.

Imp. § 55. As to fictitious payees, see § 21. The drawer of a bill, being by his contract secondarily liable, is discharged by a binding agreement between the holder and the acceptor extending the latter's time for paying the bill. — See note to § 133, *infra*, and compare note to § 55, *supra*.

**Liability by signature. Irregular endorsement. 131.** No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such: Provided that when a person signs a bill otherwise than as a drawer or acceptor he thereby incurs the liabilities of an endorser to a holder in due course and is subject to all the provisions of this Act respecting endorsers.

Imp. §§ 23, 56. Under this section one who indorses a note before its issue to the payee irregularly or *pour aval*, for the accommodation of the maker, is liable in the same manner as a regular indorser (see § 133, *infra*) to the payee as well as to subsequent holders in due course. — *Robinson v. Mann*, (1901), 31 S. C. R. 484; *Slater v. Laboree*, (1905), 10 O. L. R. 648; *Ayr Co. v. Wallace*, (1892), 21 S. C. R. 256, *semble*. See also *Balcolm v. Phinney*, (1892), 30 C. L. J. 240; *Emard v. Marcille*, (1892), Q. R. 2 S. C. 525; s. c. (1893), Q. R. 3 S. C. 268; *Banque Cartier v. Gagnon*, (1894), Q. R. 5 S. C. 499; *Abbott v. Wurtele*, (1894), Q. R. 6 S. C. 204; *Watson v. Harvey*, (1894), 10 Man. 641; *Wells v. McCarthy*, (1895), 10 Man. 639; *Fraser v. McLeod*, (1895), 2 Terr. L. R. 154; *Pegg v. Howlett*, (1897), 28 O. R. 473; *Re Lehigh Mines*, (1908), 12 O. W. R. 854; *McDonough v. Cook*, (1909), 29 C. L. T. 647; *Knechtel Co. v. Ideal Co.*, (1909), 11 West. L. R. 344; *Hatfield v. McCrohan*, (1910), 15 West. L. R. 638; *Johnson v. Macrae*, (1911), 17 West. L. R. 132. But see, *contra*, *Robertson v. Davis*, (1897), 27 S. C. R. 571, 574, *semble*; *Clapperton v. Mutchmor*, (1899), 30 O. R. 595; *Canadian Bank v. Ferram*, (1899), 31 O. R. 116; *Small v. Henderson*, (1899), 27 O. A. R. 492; *Secor v. Gray*, (1901), 3 O. L. R. 34.

**Trade or assumed name. Firm name. 132.** Where a person signs a bill in a trade or assumed name he is liable thereon as if he had signed it in his own name. 2. The signature of the name of a firm is equivalent to the signature by the person so signing, of the names of all persons liable as partners in that firm.

Imp. § 23. One may adopt as his name, the name of his wife or his agent, in which event he will be chargeable on a bill or note signed, accepted, or indorsed, by his authority in his assumed name. — *Ross v. Codd*, (1850), 7 U. C. Q. B. 64, *semble*. But in the absence of such an adoption, the indorsement by an agent in his own name of a bill or note payable to him, is not the indorsement of the principal, even though the agent was acting for his principal in the transaction, one of the incidents of which was the making of the indorsement. — *Ross v. Codd*, *supra*. In that case *Robinson, C. J.*, said (pp. 67, 68): "Williamson v. Johnson, 1 B. & C. 146. does not apply, because there was no evidence here that the defendant had been in the habit of transacting business

under the name of Margaret E. Codd. Neither are any of those cases (*Linders v. Bradwell*, 5 C. B.) in point, where a wife, as agent for her husband, has endorsed a bill in her own name which she had taken for her husband, and the question has arisen, whether the maker could be sued by her indorsee, because there the only point was with respect to the passing the property in the bill, the action being against a party clearly liable on the face of the instrument. So also those cases are beside the present, where a husband has been sued as acceptor upon an acceptance signed by his wife in her own name, and it has been proved that she acted by his general or special authority; because in those cases the bill was addressed to the husband — his connection with it appears on the face of the bill — and the wife, by writing 'accepted' on such bill, and signing only her own name, may, without looking out of the instrument, be fairly taken to declare 'for A. B. on whom this bill is drawn, I accept it', and being, legally speaking, identified in person with her husband, the action has, under such circumstances, been sustained against him as acceptor. That is only an extension of the same principle as that on which Lord Ellenborough decided in *Masson v. Ramsay et al.*, 1 Campb. 384, where a bill drawn on Messrs. Ramsay & Co. was accepted by one of the firm, thus 'accepted, T. Ramsay, sen.', without any words denoting that it was accepted for the firm. Lord Ellenborough said: 'If a bill is drawn upon a firm, and accepted by one of the partners, he must be understood to exercise his power to bind his co-partners and to accept the bill according to the terms in which it is drawn.' The acceptance by a partner of a bill drawn on the partnership in his own name, or in any other name, not that of the firm, does not bind the firm. — *Royal Bank v. Wilson*, (1874), 24 U. C. C. P. 362; *Hovey v. Cassels*, (1879), 30 U. C. C. P. 230.

**Endorser. Engages acceptance or compensation. Genuineness and regularity. Validity. 133.** [As amended by 7 & 8 Edw. 7, c. 8, § 1.] The endorser of a bill, by endorsing it, subject to the effect of any express stipulation hereinbefore authorized: a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or a subsequent endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken; b) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous endorsements; c) Is precluded from denying to his immediate or a subsequent indorsee that the bill was, at the time of his endorsement, a valid and subsisting bill, and that he had then a good title thereto.

Imp. § 55. In an action against the last indorser of a note it is no defence that the names of the maker and prior indorsers are forged. — *Eastwood v. Westley*, (1839), 6 U. C. Q. B. (O. S.) 55; *McLeod v. Carman*, (1869), 12 N. B. 592. The indorser of an unaccepted bill is estopped from denying the genuineness of the signature or the legal capacity of the drawer. — *Ross v. Dixie*, (1850), 7 U. C. Q. B. 414; *Merchants' Bank v. United Empire Club Co.*, (1879), 44 U. C. Q. B. 468; *Norris v. Condon*, (1888), 14 Q. L. R. 184. An accommodation indorser is similarly estopped. — *Choquette v. Le Claire*, (1900), Q. R. 19 S. C. 521. One of two joint payees who has indorsed cannot as against his immediate indorsee set up lack of indorsement by the other payee. — *Thurgar v. Clarke*, (1844), 4 N. B. 370. The indorser of a bill or note, being by his contract secondarily liable, is discharged by a binding agreement between the holder and the acceptor or maker, extending the latter's time for paying the instrument. — *Vankoughnet v. Mills*, (1856), 5 Grant, 653; *Arthur v. Lier*, 8 U. C. C. P. 180; *Farrell v. Oshawa Co.*, (1859), 9 U. C. C. P. 239. Cp. note to §§ 55, 130, *supra*.

**Measure of damages. Amount of bill. Interest. Expense. 134.** Where a bill is dishonoured, the measure of damages which shall be deemed to be liquidated damages shall be: a) The amount of the bill; b) Interest thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case; c) The expenses of noting and protest.

Imp. § 57. "Amount of the bill" includes interest called for on its face. — *Crouse v. Park*, (1847), 3 U. C. Q. B. 458. The legal rate of interest allowed by the law of Canada is five per cent. — R. S. C. 1906, c. 120, § 3. The rate of interest payable on the face of the bill does not govern after maturity, the legal rate applying from that time. — *St. John v. Rykert*, (1884), 10 S. C. R. 278; *Dalby v. Humphrey*, (1875), 37 U. C. Q. B. 514; *Simonton v. Graham*, (1881), 8 O. P. R. 495; *People's Loan and Deposit Co. v. Grant*, (1890), 18 S. C. R. 262. These cases change the early rule. — *Howland v. Jennings*, (1861), 11 U. C. C. P. 272; *Montgomery v. Boucher*, (1864), 14 U. C. C. P. 45; *O'Connor v. Clarke*, (1871), 18 Grant, 422. But the parties may make a contract fixing any rate of interest, however exorbitant, to be paid after maturity, and such rate will govern. — *Young v. Fluke*, (1865), 15 U. C. C. P. 360. Under R. S. O. c. 116, § 3, which gave to a surety paying a debt and securing an assignment thereof the rights of the creditor, an indorser being forced to pay and securing the assignment of a joint judgment against himself and the maker, was held to be entitled to recover the whole amount of the judgment including costs. — *Harper v. Culbert*, (1883), 5 O. R. 152. In Quebec a demand note bears interest only from demand and default. — *Cleroux v. Pigeon*, (1888), 32 L. C. Jur. 236. But see *Dechantal v. Pominville*, (1860), 6 L. C. Jur. 88.



**Recovery of same. 135.** In case of the dishonour of a bill the holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior endorser, the damages aforesaid.

Imp. § 57. See notes to § 73.

**Re-exchange and interest. 136.** In the case of a bill which has been dishonoured abroad in addition to the damages aforesaid, the holder may recover from the drawer or any endorser, and the drawer or an endorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

Imp. § 57.

**Transferer by delivery. Liability of. 137.** Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it, he is called a 'transferer by delivery.' 2. A transferer by delivery is not liable on the instrument.

Imp. § 58.

**Warranty by. Genuineness. Right to transfer. Bona fides. 138.** A transferer by delivery who negotiates a bill thereby warrants to his immediate transferee, being a holder for value: a) That the bill is what it purports to be; b) That he has a right to transfer it; and c) That at the time of transfer he is not aware of any fact which renders it valueless.

Imp. § 58. A person receiving bank notes in payment of property, or in exchange for cash, or on deposit to the credit of the payer, has the right in case of failure of the bank, to return the notes, if he does so within a proper time after receipt. — *Conn v. Merchants' Bank*, (1879), 30 U. C. C. P. 380. Where a note of a third party is transferred for valuable security, being given in payment of goods purchased, and the note is not endorsed by the transferer, a warranty is implied that the maker is not insolvent to the knowledge of the transferer. If it be proved that the maker of the note was insolvent to the knowledge of the transferer, the party who received it is entitled to offer it back and claim the amount from the transferer, without asking for the rescission of the contract in toto. — *Lewis v. Jeffery*, (1875), M. L. R. 7 Q. B. 141. Where a vendor of a colt takes, in payment of the purchase money, the note of a third party, unindorsed or otherwise guaranteed in writing by the purchaser, but which the purchaser (knowing the same to be worthless) represents to the vendor to be "as good as gold," and which proves to be really worthless in consequence of the insolvency of the parties thereto, the vendor may tender the note back and sue simply for the purchase money, without demanding the rescission of the sale. — *Miller v. Daudelin*, (1879), 24 L. C. Jur. 208. An indorser without recourse warrants to his vendee the genuineness of prior indorsements. — *Bank v. Harty*, (1906), 12 O. L. R. 218. *Cp. Merchant's Bank v. Whidden*, (1891), 19 S. C. R. 53.

#### *Discharge of bill.*

**Payment. Payment in due course. Accommodation bill. 139.** A bill is discharged by payment in due course by or on behalf of the drawee or acceptor. 2. Payment in due course means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective. 3. Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

Imp. § 59. Payment by the acceptor or maker operates as a discharge of the bill or note, i. e., as a discharge of the obligations of all parties, drawer and indorsers as well as acceptor or maker. — *Breeze v. Baldwin*, (1837), 5 U. C. Q. B. (O. S.) 444; *Cuvillier v. Fraser*, (1848), 5 U. C. Q. B. 152. But the payment must be by the acceptor or maker. Payment to the holder by a drawer or indorser, unless he is the party accommodated, does not discharge the instrument but only the party paying. — *Bank v. Armour*, (1860), 9 U. C. C. P. 401. After payment by him the maker may maintain an action against the payee for a re-delivery of the instrument to the maker. — *Carden v. Finley*, (1860), 8 L. C. Jur. 139. Payment made in behalf of the maker or acceptor, either by his bank at which he has made the bill or note payable, or even by the drawer or indorser, on behalf of the acceptor or maker, will discharge the instrument. — See *Bank v. Armour*, (1860), 9 U. C. C. P. 401; *Nightingale v. Bank*, (1876), 22 U. C. C. P. 74. But payment to operate as a discharge must be made at or after maturity. — *Vanier v. Kent*, (1902), Q. R. 11 K. B. 373, 383. If made before maturity, although it gives the acceptor or maker a personal defence against the holder to whom payment is made, it does not discharge the instrument, and a subsequent holder in due course can recover upon it. — *Fairman v. Maybee*, (1858), 7 U. C. C. P. 467, *semble*. The maker of a note cannot accelerate its maturity by tender. — *Vanier v. Kent*, (1902), Q. R. 11 K. B. 373. Payment to operate as a discharge must be made to the holder. Thus, payment at maturity to one after he has transferred the bill or note does not discharge the instrument, and a holder in due course may nevertheless charge all parties to the instrument. — *Cleveland v. Bank*, (1887), 31 L. C. Jur. 126; *Robertson v. Northwestern Co.*, (1910), 13 West, L. R. 613.

And payment after maturity is no defence to a previous purchaser though he purchased after maturity. — *Ferguson v. Stewart*, (1856), 2 U. C. L. J. 116; *Bank v. Viau*, (1880), 4 Leg. News, 133. Presumptively payment to the person in possession of a bill or note payable to bearer or indorsed in blank is in due course. — *Ferrie v. Wardens*, (1845), 1 Rev. de Leg. 27. A covenant to pay the amount of a bill or note given by the acceptor or maker to the holder, whether the covenant be given upon the delivery of the bill or note, or before or after its maturity, and whether for payment at or after the maturity of the bill or note, is held to extinguish the holder's remedy on the bill or note by the merger of it in the higher security, unless it is expressly stipulated that the covenant shall be collateral security only. — *Matthewson v. Brouse*, (1844), 1 U. C. Q. B. 272; *Kerr v. Hereford*, (1859), 17 U. C. Q. B. 158; *Commercial Bank v. Cuvillier*, (1859), 18 U. C. Q. B. 378; *Parker v. McCrea*, (1858), 7 U. C. C. P. 124; *Fairman v. Maybee*, (1858), 7 U. C. C. P. 467; *McLeod v. McKay*, (1860), 20 U. C. Q. B. 258; *Fraser v. Armstrong*, (1861), 10 U. C. C. P. 506. However, such a covenant operates merely in effect to discharge the bill or note as against the covenantee or subsequent holders not holders in due course. — See *Fairman v. Maybee*, (1858), 7 U. C. C. P. 467. If such a covenant provides that it is for collateral security only, even though it does not become due until after the maturity of the bill or note to which it is collateral, it does not extinguish by merger the holder's remedies upon the bill or note. — *Gore Bank v. Eaton*, (1868), 27 U. C. Q. B. 332; *Molsons Bank v. McDonald*, (1877), 2 O. A. R. 102. The delivery of a renewal note by the acceptor or the maker will have the same effect as payment in money if the renewal note is accepted in absolute payment. — *Cuvillier v. Fraser*, (1848), 5 U. C. Q. B. 152. But, presumptively a renewal is taken in conditional payment only, and the holder's right of action on the original bill or note revives upon the dishonour of the renewal. — *Saint-Arnaud v. Guilbault*, (1910), Q. R. 39 S. C. 481. See note to § 53 *supra*. So an accord and satisfaction between the acceptor or maker and the holder by a conveyance of land by the former to the latter has the same effect as payment. — *Adams v. Nelson*, (1862), 22 U. C. Q. B. 199. The realization by foreclosure and sale by the holder upon a chattel mortgage given to secure a note operates as a payment of the note, and the holder may not thereafter enforce the note against the maker or a prior indorser. — *Smith v. Judson*, (1835), 4 U. C. Q. B. (O. S.) 134; *Bank v. Jones*, (1851), 8 U. C. Q. B. 86. Similarly, where a holder receives payment of the insurance money upon the destruction of property mortgaged to secure a note, the receipt of the insurance money operates as payment. — *McKay v. O'Neil*, (1890), 22 N. S. 346. Cp. *Simonds v. Travis*, (1870), 13 N. B. 14. Upon a sale of pledged property in breach of the contract of pledge, the note is paid only to the amount realized upon sale, and not to an amount equal to the pledgor's damage. — *Kinnear v. Ferguson*, (1859), 9 N. B. 391. Presumptively a bill or note is paid when it is in the possession of the acceptor or maker. — *McKenzie v. Frizzell*, (1874), Rams. App. 77. But the holder, upon proof that the surrender was accidental may recover against the maker. — *Grenier v. Pothier*, (1877), 3 Q. L. R. 377. See *Vachon v. Lefebvre*, (1909), 12 West. L. R. 203. Proof of payment of a bill or note may be made by parol in Quebec. — *Carden v. Finley*, (1860), 8 L. C. Jur. 139; *Baril v. Tetreault*, (1885), 29 L. C. Jur. 208.

**Payment by drawer or endorser. Gives rights. Second negotiation. 140.** Subject to the provisions aforesaid as to an accommodation bill, when a bill is paid by the drawer or an endorser it is not discharged; but: a) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill; b) Where a bill is paid by an endorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent endorsements, and again negotiate the bill.

Imp. § 59. "When payment of a note is made by the maker at or after maturity, it is discharged and all rights of action on it are extinguished; but the payment of a note by an indorser does not totally discharge it, — it discharges him and all subsequent indorsers, but only operates as an assignment in his favour of all rights on the note against antecedent parties. — *Vanier v. Kent*, (1902), Q. R. 11 K. B. 373, 383. If the assignment is not effectuated by a retransfer to the drawer or indorser paying the bill or note, but the instrument remains in the holder's possession, he may maintain an action, notwithstanding the payment, against the acceptor or maker. — *Bank v. Armour*, (1860), 9 U. C. C. P. 401; *Goodall v. Bank*, (1887), M. L. R. 3 Q. B. 430. *Contra*, *Cleveland v. Bank*, (1887), 31 L. C. Jur. 126. But such a payment by the drawer or indorser made for and on behalf of the maker or acceptor, or by a drawer or indorser who is the party accommodated, discharges the bill or note. — *Bank v. Armour*, *supra*. Even though the holder holds under a special indorsement, no indorsement by him is necessary to effect a retransfer to the drawer or indorser. — *Black v. Strickland*, (1883), 3 O. R. 217; *Nova Scotia Co. v. Lockhart*, (1906), 1 East. L. R. 76. But see *Velie v. Hemstreet*, (1909), 11 West. L. R. 297. Such a retransfer, remits the indorser to his former position as legal holder of the bill, whether he has "paid" the bill or note or it has been returned to him without value paid. — *Black v. Strickland*, *supra*; *Nova Scotia Co. v. Lockhart*, *supra*. But see *Velie v. Hemstreet*, *supra*. Upon the retransfer of a bill payable to the order of a third person, the drawer may enforce the bill against the acceptor. — *Nova Scotia Co. v. Lockhart*, *supra*. Upon the retransfer to the drawer of a bill payable to the drawer's order, or of any bill or note to an indorser, the drawer or indorser



as the case may be, may enforce the instrument against the acceptor or maker, or after striking out the indorsements negotiate the instrument. — *Breeze v. Baldwin*, (1837), 5 U. C. Q. B. (O. S.) 444; *Latham v. Norton*, (1841), 6 U. C. Q. B. (O. S.) 82; *Black v. Strickland*, *supra*; *Nova Scotia Co. v. Lockhart*, *supra*. But see *Velie v. Hemstreet*, *supra*. An indorser to whom a retransfer has been made, must, before he can make a valid negotiation of the bill or note, strike out the indorsements upon it, even though they are in blank. — *Cuvillier v. Fraser*, (1848), 5 U. C. Q. B. 152, *semble*. In addition to his rights upon the bill or note against the acceptor or maker, an indorser who has "paid" it, may recover against the acceptor or maker as for money paid to his use. — *McNab v. Wagstaff*, (1849), 5 U. C. Q. B. 588. See *Bove v. McDonald*, (1865), 16 L. C. R. 191. As to the liability of one indorsing after maturity, see §§ 23, 86 (b) *supra*, 166, 180, 181, 182, *infra*. See also *Hovey v. Nolin*, (1889), 18 Rev. Leg. 439.

**Acceptor holding at maturity. 141.** When the acceptor of a bill is or becomes the holder of it, at or after its maturity, in his own right, the bill is discharged.

Imp. § 61. Prior to the enactment of this section if the holder, at or after maturity, became the executor of the acceptor or maker, the bill or note was extinguished. — *Jenkins v. McKenzie*, (1849), 6 U. C. Q. B. 544, *semble*. Similarly, if the holder became the executor of a prior indorser, the obligation of the indorser would be extinguished and with it the liability of subsequent indorsers. — *Jenkins v. McKenzie*, *supra*. The result would appear to be different under this section in view of the phrase "in his own right." — See *MacLaren, Bills, Notes, and Cheques*, p. 356. A retransfer of a bill to the acceptor at maturity with intention to extinguish it, in exchange for the acceptor's promise to pay the bill at a later day, discharges the instrument; and upon the default of the acceptor, the holder receiving the bill from the acceptor, cannot charge the drawer. — *Tessier v. Bank*, (1905), Q. R. 28 S. C. 140. It has been held that an accidental surrender of a note after maturity to the maker by the holder does not discharge it and that the latter may maintain an action against the former for the amount of the note. — *Grenier v. Pothier*, (1877), 3 Q. L. R. 377. See also *McKenzie v. Frizzell*, (1874), Ram. App. 77. But see *Vachon v. Lefebvre*, (1909), 12 West. L. R. 203. It has also been held that the surrender of a note to one of two joint and several makers, upon the receipt of a renewal note of one of them is conditional payment, does not discharge the surrendered note. — *Re Ives*, (1886), 7 C. L. T. 146.

**Renouncing rights. Writing. Holder in due course. 142.** When the holder of a bill, at or after its maturity, absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged. 2. The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity. 3. A renunciation must be in writing, unless the bill is delivered up to the acceptor. 4. Nothing in this section shall affect the rights of a holder in due course without notice of renunciation.

Imp. § 62. In Quebec it has been held that notwithstanding this section a parol renunciation by the payee of his rights against the maker is available as a defence to the maker against a transferee without indorsement. — *Clonbrock Co. v. Browne*, (1900), Q. R. 18 S. C. 375. See also *McLeod v. Carman*, (1869), 12 N. B. 592; *McQuarrie v. Brand*, (1896), 28 O. R. 69.

**Cancellation of bill or of any signature. Discharge of endorser. 143.** Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged. 2. In like manner, any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. 3. In such case, any endorser who would have had a right of recourse against the party whose signature is cancelled is also discharged.

Imp. § 63.

**Unintentional cancellation. Burden of proof. 144.** A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative: Provided that where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

Imp. § 63. Where an indorsee suing an indorser upon a bill or note produces it at the trial from his own custody, with the defendant's indorsement thereon cancelled, not as if by any accident, but in the most unequivocal manner, some explanation must be given to the jury for rejecting the inference that the note has been satisfied by the indorser whose name is thus cancelled. — *Peel v. Kingsmill*, (1850), 7 U. C. Q. B. 364. See also *Isaacs v. Grothe*, (1890), 29 N. B. 420.

**Alteration of bill. Holder in due course. 145.** Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent endorsers: Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

Imp. § 64. Prior to the Act a material alteration of a bill or note avoided it completely. — *Swaissland v. Davidson*, (1882), 3 O. R. 320. Even in the hands of a holder in due course, it was

unenforceable. — *Halcrow v. Kelly*, (1878), 28 U. C. C. P. 551; *Reid v. Humphrey*, (1881), 6 O. A. R. 403. If prior parties to the instrument have consented to the alteration of the instrument it can be enforced against them. — *Fitch v. Kelly*, (1879), 44 U. C. Q. B. 578; *Lytell v. Foell*, (1909), 13 O. W. R. 738. Since the Act, if the alteration is not apparent, a holder in due course may recover upon the instrument as if it had not been altered. — *Cunnington v. Peterson*, (1898), 29 O. R. 346, *semble*. See also, *People's Bank v. Wharton*, (1894), 27 N. S. 67; *Mutual Life v. McLaughlin*, (1903), 36 C. L. J. 630. But one not a holder in due course may not recover on an altered instrument even though he erases the inserted words before the objecting maker becomes aware of the change. — *Banque Provinciale v. Arnoldi*, (1901), 2 O. L. R. 624. If a holder may reasonably fail to detect the alteration it is not "apparent." — *Cunnington v. Peterson*, *supra*. As to ratification of a forged bill or note see note to § 49.

**Material alteration: date; sum; time; place; adding places. 146.** In particular any alteration: a) Of the date; b) Of the sum payable; c) Of the time of payment; d) Of the place of payment; e) By the addition of a place of payment without the acceptor's assent where a bill has been accepted generally; is a material alteration.

Imp. § 64. Whether a note has been altered is a question for the jury. — *Domville v. Davies*, (1879), 13 N. S. 159; *Street v. Walsh*, (1862), *Stevens N. B. Dig.* 250. The materiality of the alteration is a question of law. — *Re Commercial Bank*, (1894), 10 Man. 174; *Pickup v. Northern Bank*, (1908), 9 West. L. R. 173, 177. Alteration of date is a material alteration. — *Meredith v. Culver*, (1848), 5 U. C. Q. B. 218; *Gladstone v. Dew*, (1859), 9 U. C. C. P. 439; *Beltz v. Molsons Bank*, (1876), 40 U. C. Q. B. 253; *Banque Ville Marie v. Primeau*, (1881), 26 L. C. Jur. 20; *Quebec Bank v. Ogilvy*, (1883), 3 Dorion, 200; *Boulton v. Langmuir*, (1897), 24 O. A. R. 618. But where an erroneous date had been inadvertently inserted it may be corrected. — *McLaren v. Miller*, (1900), 36 C. L. J. 680. Alteration of the sum payable is a material alteration. — *Halcrow v. Kelly*, (1878), 28 U. C. C. P. 551; *Fitch v. Kelly*, (1879), 44 U. C. Q. B. 578; *Hebert v. Banque Nationale*, (1908), 40 S. C. R. 458. So also is an alteration of the time of payment. — *McQueen v. McIntyre*, (1879), 30 U. C. C. P. 426. An alteration even though it is an extension of time of benefit to the maker, discharges him. — *Boulton v. Langmuir*, *supra*. But see *Canadian Investment Co. v. Brown*, (1890), 19 Rev. Leg. 364. The following are also material alterations: Adding a place of payment. — *Jones v. Reid*, (1906), 7 O. W. R. 131. Changing a joint to a joint and several note. — *Samson v. Yager*, (1834), 4 U. C. Q. B. (O. S.) 3; *Peoples Bank v. Wharton*, (1894), 27 N. S. 67; *Banque Provinciale v. Arnoldi*, (1901), 2 O. L. R. 624. Adding words of negotiability to a non-negotiable note. — *Lawton v. Millidge*, (1844), 4 N. B. 520. Striking out the word "renewal." — *Maxon v. Irwin*, (1907), 15 O. L. R. 81. Erasing or obliterating a condition indorsed. — *Campbell v. McKinnon*, (1859), 18 U. C. Q. B. 612; *Swaisland v. Davidson*, (1883), 3 O. R. 320. Adding a new maker after issue. — *Reid v. Humphrey*, (1881), 6 O. A. R. 403; *Carrique v. Beaty*, (1897), 24 O. A. R. 302. But it is not a material alteration for the holder of a joint and several note to place his signature below the maker's. — *Kinnard v. Tewsley*, (1896), 27 O. R. 398. See also *Lytell v. Foell*, (1909), 13 O. W. R. 738. And where the change merely embodies the correction of an error, it is not a material alteration. — *Laine v. Clarke*, (1816), 3 Rev. de Leg. 434; *Merchants' Bank v. Stirling*, (1880), 13 N. S. 439; *Abbott v. Wurtele* (1894), Q. R. 6 S. C. 204.

#### *Acceptance and payment for honour.*

**Acceptance for honour supra protest. 147.** Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

Imp. § 65. One not the drawee cannot be charged as acceptor of a bill already conditionally accepted by the drawee. — *Spalding v. McKay*, (1838), 5 U. C. Q. B. (O. S.) 656.

**In part. 148.** A bill may be accepted for honour for part only of the sum for which it is drawn.

Imp. § 65.

**Deemed to be for honour of drawer. 149.** Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

Imp. § 65.

**Maturity of after sight bill. 150.** Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of protesting for non-acceptance, and not from the date of the acceptance for honour.

Imp. § 65. McLaren says: "In order to make it harmonize with section 23 (a), the words 'at sight or' should have been inserted as was done by amending the Act of 1891, in what are now sections 5, 30, 37 and 77. It is likely, however, that the Courts will interpret it as if the change had been made." — McLaren, *Bills, notes, and cheques*, p. 374.



**Requirements: writing; signature. 151.** An acceptance for honour supra protest, in order to be valid must: a) Be written on the bill, and indicate that it is an acceptance for honour; and b) Be signed by the acceptor for honour.

Imp. § 65.

**Liability of acceptor for honour. 152.** The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee provided it has been duly presented for payment and protested for non-payment, and that he receives notice of these facts. 2. The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

Imp. § 66.

**Payment for honour supra protest. If more than one offer. Refusal to receive payment. Entitled to bill. Liability for refusing. 153.** Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. 2. Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference. 3. Where the holder of a bill refuses to receive payment supra protest, he shall lose his right of recourse against any party who would have been discharged by such payment. 4. The payer for honour, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest. 5. If the holder does not on demand in such case deliver up the bill and protest, he shall be liable to the payer for honour in damages.

Imp. § 68. One taking up a bill supra protest succeeds to the title of the person from whom he receives it, so as to sue thereon all parties except those subsequent to the one for whose honour he takes it up; but he cannot himself indorse the instrument over. — In *Re Overend, Gurney & Co. Ex parte Swan*, (1868), L. R. 6 Eq. 356. Approved in *Cowan v. Doolittle*, (1881). 46 U. C. Q. B. 398. See also *MacArthur v. MacDowall*, (1893), 23 S. C. R. 571.

**Attestation of payment for honour. Declaration. 154.** Payment for honour supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it. 2. The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

Imp. § 68.

**Discharge. Subrogation. 155.** Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of the holder as regards the party for whose honour he pays, and all parties liable to that party.

Imp. § 68.

#### *Lost instruments.*

**Holder to have duplicate of lost bill. Refusal. Compulsion. 156.** Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever, in case the bill alleged to have been lost shall be found again. 2. If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so.

Imp. § 69.

**Action on lost bill. Indemnity. 157.** In any action or proceeding upon a bill, the Court or a Judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the Court or Judge against the claims of any other person upon the instrument in question.

Imp. § 70. The loss must be proved to the satisfaction of the Court before secondary evidence is admissible. — *Grover v. Clark*, (1835), 5 U. C. Q. B. (O. S.) 208; *Wante v. Robinson*, (1816), 2 Rev. de Leg. 29; *Beaupré v. Burn*, (1821), 2 Rev. de Leg. 31; *Carden v. Ruiter*, (1864), 9 L. C. Jur. 217. Hence a plea denying the loss alone will be good. — *Campbell v. McCrea*, (1853), 11 U. C. Q. B. 93. If a note has been surrendered to the defendant through fraud on proof thereof it may be treated as a lost note. — *Irwin v. Freeman*, (1867), 13 Grant, 465; *McIntyre v. McGregor* (1900), 21 C. L. T. 25; *Matthews v. Marsh*, (1903), 5 O. L. R. 540. One suing on a lost note must make tender of indemnity to maker, before action. — *Banque Jacques Cartier v. Strachan*, (1869), 5 O. P. R. 159; *Tessier v. Caillé*, (1902), Q. R. 25 S. C. 207; *Orton v. Brett*, (1899), 12 Man. 448. But the tender may be waived by the defendant. — *Abell v. Morrison*, (1876), 23 Grant, 109. Indemnity is not required in the case of instruments not negotiable. — *Cooley v. Dominion*

Building Society, (1878), 24 L. C. Jur. 111. But see *Pillow Co. v. L'Espérance*, (1902), Q. R. 22 S. C. 213. Commercial suretyship is sufficient, and a judicial suretyship is not required for indemnity. — *Pittsburg Steel Co. v. Leprohon*, (1910), 16 Rev. de Jur. 64.

*Bill in a set.*

**Bills in set. Acceptance. 158.** Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill. 2. The acceptance may be written on any part, and it must be written on one part only.

Imp. § 71.

**Endorsing more than one part. Negotiation to different holders. Acceptance in due course. More than one part accepted. Part accepted. Payments without delivery. Discharge. 159.** Where the holder of a set endorses two or more parts to different persons, he is liable on every such part, and every endorser subsequent to him is liable on the part he has himself endorsed as if the said parts were separate bills. 2. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed the true owner of the bill: Provided that nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him. 3. If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill. 4. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof. 5. Subject to the provisions of this section, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Imp. § 71.

*Conflict of laws.*

**Requisites of form. Unstamped bills. Conforming to the law of Canada. 160.** Where a bill drawn in one country is negotiated, accepted or payable in another, the validity of the bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance or endorsement, or acceptance *supra protest*, is determined by the law of the place where the contract was made: Provided that: a) Where a bill is issued out of Canada, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue; b) Where a bill, issued out of Canada, conforms, as regards requisites in form, to the law of Canada, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate hold or become parties to it in Canada.

Imp. § 72. "Drawing" includes not only the writing and signing, but also the delivery. — *Wallace v. Souther*, (1878), 2 S. C. R. 598, 613. When by the *lex loci contractus* the acceptance of a bill of exchange releases sureties on a debt, the foreign law will be recognized in Canada and the sureties discharged. — *Bellingham v. Freer*, (1837), C. R. 1 A. C. 95.

**Lex loci. Law of Canada. 161.** Subject to the provisions of this Act, the interpretation of the drawing, endorsement, acceptance, or acceptance *supra protest* of a bill, drawn in one country and negotiated, accepted, or payable in another, is determined by the law of the place where such contract is made: Provided that where an inland bill is endorsed in a foreign country, the endorsement shall, as regards the payer, be interpreted according to the law of Canada.

Imp. § 72. Unless the place of payment is specified and made exclusive, the note is payable generally and the *lex loci contractus* will govern the construction and rate of interest of a note. — *Hooker v. Leslie*, (1868), 27 U. C. Q. B. 295. See also, *Northwestern Bank v. Jarvis*, (1883), 2 Man. 53; *Astor v. Benn* (1812) 2 Rev. de Leg. 27. "Interpretation" in the Act means the legal effect. As to indorser's contract see *London and Brazilian Bank v. Maguire*, (1895), Q. R. 8 S. C. 358. The domicile of the drawer of a bill of exchange does not affect the operation of the *lex loci contractus*. — *Story v. Mc Kay*, (1888), 15 O. R. 169. In the absence of proof the *lex loci contractus* will be presumed to accord with the *lex fori*. — *Griffin v. Judson*, (1862), 12 U. C. C. P. 430; *Security National Bank v. Pritt*, (1910), 14 West L. R. 216. The foreign law must be proved as a fact. — *Hope v. Caldwell*, (1871), 21 U. C. C. P. 241; *Robertson v. Caldwell*, (1871), 31 U. C. Q. B. 402. A foreign accommodation making or indorsement followed by negotiation in Canada leaves the instrument a Canadian contract. — *Merchants Bank v. Stirling*, (1880), 13 N. S. 439; *Cloyes v. Chapman*, (1876), 27 U. C. C. P. 22.

**Law as to duties to holder. 162.** The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest



or notice of dishonour, are determined by the law of the place where the act is done or the bill is dishonoured.

**Imp. § 72.** What is a reasonable time for presentment is to be determined by the place of presentment, but where no proof is made of the law of such place it will be presumed to be the same as the law of the forum. — *Security National Bank v. Pritt*, (1910), 14 West. L. R. 216; *Buffalo Bank v. Truscott*, (1838), 1 Rob. & Jos. Dig. 495. See also *Howard v. Sabourin*, (1854), 5 L. C. R. 45; *Allen v. Mc. Naughton*, (1858), 9 N.B. 234.

**Currency. 163.** Where a bill is drawn out of but payable in Canada, and the sum payable is not expressed in the currency of Canada, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

**Imp. § 72.**

**Due date. 164.** Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

**Imp. § 72.** Where the third day of grace falls on Sunday, the *lex loci solutionis* determines the day proper for protest. — *Bank of America v. Copeland*, (1881), 4 Leg. News, 154.

### *Part III. Cheques on a Bank.*

**Cheque defined. Provisions as to bills apply. 165.** A cheque is a bill of exchange drawn on a bank, payable on demand. 2. Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

**Imp. § 73.** The exceptions mentioned in subsection 2 are to be found on §§ 166—175 inclusive.

*Cheque accepted as conditional payment.* — A cheque operates as conditional payment until it has been dishonoured. — *Hughes v. Canada, etc., Soc.* (1876), 39 U. C. Q. B. 221. See note to § 53. Laches is presenting the cheque of a third party accepted in conditional payment or in giving notice to debtor of dishonour will bar the rights of the creditor against the debtor on non-payment of the cheque. — *Redpath v. Kolfage*, (1858), 16 U. C. Q. B. 433; *Sawyer v. Thomas*, (1890), 18 O. A. R. 129. See also *Owens v. Quebec Bank*, (1870), 30 U. C. Q. B. 382; *Queen v. Bank of Montreal*, (1886), 1 Ex. C. R. 154.

*Cheque accepted as accord and satisfaction.* — When a cheque for an amount less than the debt, but bearing the words "in full of claim" is accepted by the creditor it is a question of fact whether it was taken in accord and satisfaction. — *McPherson v. Copeland*, (1908), 9 West. L. R. 623. MacLaren says this doctrine "would probably not be accepted in the Province of Quebec where the technical rules of the English law as to accord and satisfaction do not obtain." — *MacLaren, Bills, notes, and cheques*, p. 408. But see *Paquet Co. v. Paquin*, (1910), Q. R. 39 S. C. 58.

*Certification.* — The Canadian usage of certification was recognized in two appeals to the Privy Council. — *Gaden v. Newfoundland Savings Bank*, (1899) A. C. 281; *Imperial Bank of Canada v. Bank of Hamilton*, (1903) A. C. 49. By certification or acceptance the bank becomes liable to the holder and there is privity between them. — *Banque Nationale v. City Bank*, (1873), 17 L. C. Jur. 197; *Exchange Bank v. Banque du Peuple*, (1886), M. L. R. 3 Q. B. 232. See also *Re Commercial Bank*, (1894), 10 Man. 171; *Wellesley v. Mc Faddin*, (1911), 19 O. W. R. 637. The drawer and indorsers are thereby discharged from liability. — *Boyd v. Nasmith*, (1888), 17 O. R. 40; *Légaré v. Arcand*, (1895), Q. R. 9 S. C. 122; *Banque Jacques Cartier v. Corporation de Limoilou*, (1889), Q. R. 17 S. C. 211. A material alteration after certification will relieve the bank of liability. — *Re Commercial Bank*, (1894), 10 Man. 171. The mere initialling of a cheque by the cashier does not amount to a certification or acceptance. — *Commercial Bank v. Fleming*, (1872), 1 Stevens' N. B. Dig. 294. When the account against which a cheque is drawn bears interest, the interest ceases to run on certification to the money may not be drawn out until long after. — *Wilson v. Banque Ville Marie*, (1880), 3 Leg. News, 71. Allowing another bank to put on its cheques "payable at Bank of Montreal, Toronto, at par," does not oblige the Bank of Montreal to pay them if the drawer has no funds in its hands. — *Rose-Belford Printing Co. v. Bank of Montreal*, (1886), 12 O. R. 544.

**Presentment for payment. Measure of damage. Holder becomes creditor. Reasonable time. 166.** Subject to the provisions of this Act: a) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque paid; b) The holder of such cheque as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such bank to the extent of such discharge, and entitled to recover the amount from it. 2. In determining what is a reasonable time, within this section,

regard shall be had to the nature of the instrument, the usage of trade and of banks, and the facts of the particular case.

Imp. § 74. *Exceptions*: The provisions of the Act to which this section is subject are the sections relating to excuses for delay in presentment and non-presentment. See §§ 91 and 92.

*Difference between cheques and other bills of exchange payable on demand.* — "As regards the drawer the effect of not presenting a cheque within a reasonable time differs from that relating to other bills payable on demand. In the case of the latter the drawer, as well as the indorsers, are wholly discharged by the failure to present it for payment within a reasonable time. § 85. This part of the Act relating to cheques does not modify the rule as regards the indorsers; but the present section lays down a different rule as regards the drawer, who is only discharged to the extent to which he actually suffers damage by the delay and otherwise is not discharged until relieved by prescription or the Statute of Limitations." — Maclaren, *Bills, notes, and cheques*, p. 415. Accordingly it has been held that in an action on a cheque payable to order, brought by the indorsee, it is not necessary to allege that the cheque had been presented within a reasonable time at the bank where it was payable and that payment had been refused and that the cheque had been protested for non-payment. These are matters of defence. It is for the drawer to allege and prove damage. — *De Gerres v. Euard*, (1899), Q. R. 17 S. C. 199. See also *Crowell v. Longard*, (1896), 28 N. S. 257; *Nacliod v. Stern*, (1897), 30 N. S. 251. Compare subsection b with § 127.

*Reasonable time.* — Chalmers says: "This subsection (2), perhaps, introduces a new and less rigorous measure of reasonable time." — (Chalmers's *Bills of Exchange* (7th ed.) p. 275. The Canadian law in the absence of special circumstances construed reasonable time for presentment or forwarding for presentment to be the day following receipt of the cheque. — *Blackley v. McCabe*, (1889), 16 O. A. R. 295; *Owens v. Quebec Bank*, (1870), 30 U. C. Q. B. 382. This rule has always been subject to relaxations in particular cases. Thus, where according to the trade usage of a locality cheques are not always presented for payment immediately, but are frequently kept for some days and are transferred from hand to hand as a convenient circulating medium, a delay of ten days is not unreasonable. — *Campbell v. Riendeau*, (1892), Q. R. 2 Q. B. 604. See also *Bank v. Warren*, (1909), 19 O. L. R. 257, cited in note to § 70, *supra*. But under special circumstances unusual haste in presentment may be required. Thus, where the cheque is for a large amount and there is prevalent a spirit of distrust of the solvency of the bank upon which the cheque is drawn, three days is clearly an unreasonable time. — *Banque Jacques Cartier v. Corporation de Limoilou*, (1899), Q. R. 17 S. C. 211. See also *Mailer v. Stewart*, (1878), Cons. Que. Dig. 212; *Légaré v. Arcand*, (1895), Q. R. 9 S. C. 122. As to effect of presentment for certification by payee, see note to § 165. Compare this section and note with § 77 and 85, *supra*, and § 180, *infra*.

**Authority to pay. Countersignature. Death. 167.** The duty and authority of a bank to pay a cheque drawn on it by its customer, are determined by: a) Countersignature of payment; b) Notice of the customer's death.

Imp. § 75. A bank having funds of a customer sufficient to meet a cheque is bound to pay it and for failure so to do is liable to an action for damages. — *Todd v. Union Bank*, (1887), 4 Man. 204; *Perreault v. Bank*, (1905), Q. R. 27 S. C. 149. But if the customer be a non-trading depositor in a savings bank his damages for wrongful refusal to allow him to withdraw his deposit are limited to the interest on the deposit. — *Henderson v. Bank of Hamilton*, (1894), 25 O. R. 641; s. c. (1895), 22 O. A. R. 414. A bank may in the absence of special instructions pay out of his general deposit any bill or note of which the customer is acceptor or maker, and which is accepted or drawn, payable at the bank. — *Nightingale v. Bank*, (1876), 26 U. C. C. P. 74; *Jones v. Bank*, (1869), 29 U. C. Q. B. 448, 454, *semble*.

### *Crossed cheques.*

**Definition. General. Special. 168.** Where a cheque bears across its face an addition of: a) The word "bank" between two parallel transverse lines, either with or without the words "not negotiable;" or, b) Two parallel transverse lines simply, either with or without the words "not negotiable;" such addition constitutes a crossing, and the cheque is crossed generally. 2. Where a cheque bears across its face an addition of the name of a bank, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that bank.

Imp. § 76. "Sections 168 to 175, inclusive, treat of crossed cheques. They are copied from the Imperial Act, with the substitution of 'bank' for 'banker', as private bankers are not recognized by the Canadian Act. The practice of crossing cheques did not obtain in Canada before the Act of 1890, and it has been adopted only to a very limited extent since, as the drawer can protect himself by making a cheque payable to order, since our Parliament refused to adopt section 60 of the Imperial Act, which relieves a bank from responsibility for the genuineness or authorisation of the endorsement on cheques drawn upon it." — Maclaren, *Bills, notes, and cheques*, p. 421. See also Falconbridge, *Banking and bills of exchange*, p. 619, and Russell on Bills, pp. 423—9.

**By drawer. By holder. Varying. Words may be added. By bank for collection, Changing crossing. Uncrossing. 169.** A cheque may be crossed generally or specially



by the drawer. 2. Where a cheque is uncrossed, the holder may cross it generally or specially. 3. Where a cheque is crossed generally, the holder may cross it specially. 4. Where a cheque is crossed generally or specially, the holder may add the words "Not negotiable." 5. Where a cheque is crossed specially the bank to which it is crossed may again cross it specially to another bank for collection. 6. Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, it may cross it specially to itself. 7. A crossed cheque may be re-opened or uncrossed by the drawer writing between the transverse lines, the words "Pay cash," and initialling the same.

Imp. § 77.

**Materially altering crossing. 170.** A crossing authorized by this Act is a material part of the cheque. 2. It shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing.

Imp. § 78.

**Crossed to more than one bank. 171.** Where a cheque is crossed specially to more than one bank, except when crossed to another bank as agent for collection, the bank on which it is drawn shall refuse payment thereof.

Imp. § 79.

**Liability for improper payment. Bona fides. 172.** Where the bank on which a cheque so crossed is drawn, nevertheless pays the same, or pays a cheque crossed generally otherwise than to a bank, or, if crossed specially, otherwise than to the bank to which it is crossed, or to the bank acting as its agent for collection, it is liable to the true owner of the cheque for any loss he sustains owing to the cheque having been so paid: Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the bank paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a bank or to the bank to which the cheque is or was crossed, or to the bank acting as its agent for collection, as the case may be.

Imp. § 79.

**Protection in such case. 173.** Where the bank, on which a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally to a bank, or, if crossed specially, to the bank to which it is crossed, or to a bank acting as its agent for collection, the bank paying the cheque, and if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Imp. § 80.

**"Not negotiable" cross. 174.** Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it.

Imp. § 81.

**Customer without title. Bank paying. Bona fides. 175.** Where a bank, in good faith and without negligence, receives for a customer payment of a cheque crossed generally or specially to itself, and the customer has no title, or a defective title thereto the bank shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Imp. § 82.

#### *Part IV. Promissory Notes.*

**Definition. Endorsed by maker. Pledge. Invalidity. 176.** A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person, or to bearer. 2. An instrument in the form of a note payable to the maker's order is not a note within the meaning of this section, unless it is endorsed by the maker. 3. A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

Imp. § 83. As to the formal requisites of bills and notes, see notes to §§ 17 and 18, *supra*. A blank indorsement transforms such instrument into a note payable to bearer. — *Burns v. Harper*,

(1849), 6 U. C. Q. B. 509; *Wallace v. Henderson*, (1849), 7 U. C. Q. B. 88. See also *Ennis v. Hastings*, (1860), 9 N. B. 482. A written acknowledgment of indebtedness is not a promissory note unless it is coupled with a promise to pay, and fulfils the other requirements for negotiability. — *Whishaw v. Gilmour*, (1862), 6 L. C. Jur. 319; *De Sola v. Ascher*, (1889), 17 Rev. Leg. 315; *Hulsted v. Hirschman*, (1908), 18 Man. 103. A banker's deposit receipt, if negotiable where issued will be recognized as negotiable by the *lex fori*. — *Security National Bank v. Pritt*, (1910), 14 West. L. R. 216. When a note states that it is given as collateral security it is not a promissory note. — *Hall v. Merriek*, (1877), 40 U. C. Q. B. 566; *Sutherland v. Patterson*, (1884), 4 O. R. 565. As to the negotiability of a note given for chattels and providing that the title to the articles shall remain in the vendor until the note is paid, see note to § 17. The right to claim collateral security given with a note, passes with a transfer of the note. — *Central Bank v. Garland*, (1890), 20 O. R. 142; *Vezina v. Maltais*, (1904), 10 Rev. de Jur. 301. See also *Cochran v. Boucher*, (1883), 3 O. R. 462, 472. The right of the creditor to hold such securities is not lost by the bar to recovery on the note raised by the Statute of Limitations. — *Wiley v. Ledyard*, (1883), 10 O. P. R. 182.

**Inland note. Foreign note. 177.** A note which is, or on the face of it purports to be, both made and payable within Canada, is an inland note. 2. Any other note is a foreign note.

Imp. § 83.

**Delivery. 178.** A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

Imp. § 84. See note to § 40, and § 41.

**Joint and several note. Individual promise. 179.** A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenor. 2. Where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note.

Imp. § 85. By the common law the obligation of two or more makers of a promissory note is joint unless a joint and several liability is expressly stipulated. A note reading "we promise" signed by several is their joint note. — *Chalmers, Bills of Exchange Act* (7th ed.), p. 298. In Quebec under Civil Code, art. 1105, such a note, if given as part of a commercial transaction, would be the joint and several note of the makers. — *Malhiot v. Tessier*, (1870), 2 Rev. Leg. 625; *Perrault v. Bergevin*, (1886), 14 Rev. Leg. 604; *Drouin v. Gauthier*, (1903), Q. R. 12 K. B. 442; *Dagneau v. Decaire*, (1906), 5 Q. P. R. 141. Section 10, *supra*, is held, however, to have introduced into Quebec the common law rule for determining the character of the maker's obligation. Consequently, such a note is now held in Quebec to be the joint note of the makers. — *Crepau v. Beauchesne*, (1898), Q. R. 14 S. C. 495; *Noble v. Forgrave*, (1899), Q. R. 17 S. C. 234. But the character of the obligation of the makers having been determined as either joint or joint and several, the legal consequences of a joint or a joint and several obligation are determined by the principal law. — *Cook v. Doods*, (1903), 6 O. L. R. 608; *Noble v. Forgrave*, *supra*. But see *Crepeau v. Beauchesne*, *supra*. See also note to § 10, *supra*. A note in the form "I promise", signed by several makers is their joint and several note. — *Creighton v. Fretz*, (1867), 26 U. C. Q. B. 627; *Congregation v. Backman*, (1906), Q. R. 31 S. C. 23. Where two infants are among the makers of a joint and several note, their privy may be overlooked and the note may be described as the contract of the adult maker or makers. — *Park v. Pullishy*, (1911), 16 West. L. R. 457. See also *Metro-politan Bank v. Austin*, (1911), 18 O. W. R. 830.

**Demand note presentment. Reasonable time. 180.** Where a note payable on demand has been endorsed, it must be presented for payment within a reasonable time of the endorsement. 2. In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and the facts of the particular case.

Imp. § 86. It is held that whether or not presentment has been made within a reasonable time is a mixed question of law and fact. — See note to § 77, *supra*. Where the facts are not disputed, whether or not presentment was made within reasonable time is a question for the Court. — See note to § 77, *supra* and *Security Bank v. Pritt*, (1910), 14 West. L. R. 216.

*What is reasonable time.* — A certificate of deposit, or deposit receipt, payable to the order of defendant on demand was issued to defendant by a bank in Minnesota, U. S. A. Defendant indorsed the same over to plaintiff who sent it on the same day to another bank for collection. Three days later plaintiff received notice that the issuing bank had suspended payment. Plaintiff at once wrote to the defendant that the certificate had been returned unpaid and asked for reimbursement. There was no evidence that this letter was received by the defendant. After waiting five days and receiving no answer, the plaintiff sent the certificate to an agent in Minnesota who, at once, but ten days after indorsement of note by defendant to plaintiff, presented it to the issuing bank for payment which was refused. Held, that under these circumstances the certificate, which was treated as a demand note, had been presented within a reasonable time after indorsement. The Court said: "When it was returned to them, they held it only 5 days in order to notify the defendant before sending it again for presentment and protest. This delay did not in any way injure the defendant, the Scott County Bank being then insolvent, and I think that, under the circumstances they did not hold the same an unreasonable time before presenting it for payment, and that it was therefore presented within a reasonable time and dis-



honoured, of which due notice was given to the defendant." So where the defendant indorsed a demand note on which interest was payable only from demand March 28, 1885, for the maker, a friend whom he knew to be bankrupt, and the note was not protested until August 28, 1888, the indorser was not discharged, as he was not injured but rather benefited by the delay. \$ 50 having been paid September 27, 1887, and the maker's circumstances having improved in the mean time. — *Dandurand v. Roulier*, (1889), 33 L. C. Jur. 167. The Court, through Johnson, J., said: "Apart from the strict observance of the law regarding protest and notice in cases of notes due at a fixed date, there is nothing to prevent an indulgence to the maker, unless it makes the condition of the indorser worse. In this case it is admitted that the indorser knew all along of the maker's insolvency." — See note to § 86, *supra*. Where a demand note is payable with interest, this has been considered an indication that an early presentment was not contemplated. — *Thorne v. Scovil*, (1844), 4 N. B. 557; *Commercial Bank v. Allan*, (1894), 10 Man. 330. But where a demand note which did not on its face bear interest, was made and indorsed August 25, 1891, but not presented for payment before May 7, 1894, the maker having been in the holder's employment during nearly all the intervening time until his death, (which occurred before presentment for payment) and never having paid anything on account, the indorser was held to be discharged. — *La Banque du Peuple v. Denicourt*, (1896), Q. R. 10 S. C. 428.

**Endorser discharged. Security. 181.** If a promissory note payable on demand, which has been endorsed is not presented for payment within a reasonable time the endorser is discharged: Provided that if it has, with the assent of the endorser, been delivered as a collateral or continuing security it need not be presented for payment so long as it is held as such security.

Imp. § 86. As to reasonable time see § 180, *supra*, and note.

*Note given as collateral or continuing security.* — Where the directors of a joint stock company indorsed a note of the company, which was given to the bank as continuing security, and it was held for twenty-seven months before payment was demanded, it was held that the indorsers were not discharged. — *Merchants' Bank v. Whitfield*, (1881), 2 Dorion, 157.

**Not deemed overdue. 182.** Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Imp. § 86. As to defects of title, see note to § 56, *supra*. Where a promissory note payable on demand is indorsed to the plaintiffs on the day it bears date it is clearly not overdue when negotiated so as to affect the plaintiffs as holders with defects of title of which they had no notice. — *Northern Crown Bank v. International Elec. Co.*, (1910), 22 O. L. R. 339, *aff'd.*, 19 O. W. R. 392. In this case the Court said: "As sec. 186 makes the provisions of the Act relating to bills of exchange applicable to promissory notes — sec. 70, but for the provisions of sec. 182, would be applicable to promissory notes. But, inasmuch as promissory notes payable on demand had always stood on a different footing from bills of exchange so payable, being, as it was said, more in the nature of continuing securities, sec. 182 was enacted for the purpose of continuing that distinction, and in order to provide that, though a bill payable on demand was to be deemed to be overdue when it appears on its face that it has been in circulation for an unreasonable length of time, a different rule should be applicable to a promissory note payable on demand, which should not be deemed to be overdue because at the time of its negotiation it appeared that a reasonable time for presenting it for payment had elapsed since its issue — I mean, of course, 'overdue' within the meaning and for the purposes of sec. 70. Although the provision of sec. 182 is a negative one, that 'a note payable on demand is not to be deemed to be overdue . . .' the same effect ought to be given to it as to the affirmative one contained in sec. 70. It is probable that the negative form of expression was used by the draftsman because the purpose of sec. 182 was to make an exception to the rule prescribed by sec. 70." See also § 70, *supra*, and Russell, on Bills, pp. 451, 2.

**Presentment, where. Liability of maker. Note payable generally. 183.** Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place. 2. In such case the maker is not discharged by the omission to present the note for payment on the day that it matures; but if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the Court. 3. If no place of payment is specified in the body of the note, presentment for payment is not necessary in order to render the maker liable.

Imp. § 87. *Where a note is made payable at a particular place.* — Under this section a note made payable "to the order of C. at Halifax" is payable at a particular place. — *Cunard v. Simon-Kaye*, (1894), 27 N. S. 344. Where the note is payable at a bank the office of the bank at the place where the note is dated, rather than the general office, is the particular place of payment. — *Commercial Bank v. Bissett*, (1891) 7 Man. 586; *Canada Paper Co. v. Gazette Pub. Co.*, (1893), 32 N. B. 689. So a note payable "at any bank" means any bank in the place where the note is dated. — *Baldwin v. Hitchcock*, (1869), 12 N. B. 310. See note to § 88, *supra*.

*What is necessary to presentment.* — If the bill is payable at a particular place and is lying there when due, this is sufficient presentment. See note to § 88. *supra*. See also *De la Chevrolière v. Guilmet*, (1886), 9 *Leg. News*, 412.

*Whether or not presentment at the particular place named in body of note is necessary under this section* has been the subject of conflicting decisions. "The first clause of this section and the first clause of its subsection 2 are but declaratory of the common law as interpreted in *Rhodes v. Gent*, 5 B. & Ald. 244, and *Anderson v. Cleveland*, 13 East, 430, viz., that the presentment at the place named is essential, if the note is made payable at a particular place but the maker is not discharged by any delay in such presentation short of the period fixed by the Statute of Limitations." — *Fitzgerald, J.*, in *Sinclair v. Deacon*, (1909), 7 East. L. R. 222; *McLellan v. McLellan*, (1866), 17 U. C. C. P. 109; *Driggs v. Waite*, (1842), 6 U. C. Q. B. (O. S.) 310; *Miller v. Dodge*, (1891), 23 N. S. 191; *Pigeon v. Moore*, (1891), 23 N. S. 246. In Prince Edward Island and Ontario before the Act of 1890 it was not necessary to present a promissory note payable at a particular place, as against the maker unless the words "and not otherwise or elsewhere" were added. — *R. S. C.* (1886) c. 123 §§ 9, 16. See § 38. The rule in Quebec, was that no presentment was necessary but that costs lay in the discretion of the court if the action was brought before presentment. — *Crepeau v. Moore*, (1882), 8 Q. L. R. 197. Thus, where a note was made payable at the plaintiff's house, on demand, but subsequently plaintiff gave the note to his attorney and it was not in his hands to return it to the defendant, and the defendant, upon action brought without demand, paid the money into court with his plea, it was held that he was not liable for the costs of the action. — *Lessard v. Genest*, (1883), *Ram. App.* 86. See also *Mount v. Dunn*, (1854), 4 L. C. R. 348; *Rice v. Bowker*, (1853), 3 L. C. R. 305; *O'Brien v. Stevenson*, (1865), 15 L. C. R. 265; *Mineault v. Lajoie*, (1877), 9 *Rev. Leg.* 382; *Archer v. Lortie*, (1877), 3 Q. L. R. 159; *Dorion v. Benoit*, (1879), 2 *Leg. News*, 171. The new matter in this section is: "But if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the court." It is on the interpretation of this new matter that the difference of opinion arises. The view supported by the weight of authority is that presentment before action brought is not necessary, but in such a case the costs lie in the discretion of the court. — *Freeman v. Canadian G. L. Ins. Co.*, (1908), 17 O. L. R. 296, following the dictum of *Armour, C. J.*, in *Merchants' Bank v. Henderson*, (1897), 28 O. R. 360, 365; *Sinclair v. Deacon*, (1909), 7 East. L. R. 222. In *Sinclair v. Deacon, supra*, the court said: "It is suggested that this proviso only refers to non-presentation on the day the note matures. This cannot be, as no question of costs could possibly arise where due presentment was made before action brought. At no time was the holder as against the maker bound to present on the day of maturity; and the statute makes no change in that respect. What is there to support the idea that the holder might now be punished in costs for non-presentment on the day? And, it is suggested, that it refers to the defendant's costs, in this way, that when he succeeds, as it is contended he must, if presentation is not made before action, the Court might still deprive him of the costs usually given to a successful suitor. It is difficult to see why, if presentation is necessary before suit brought, the defendant has relied upon his rights, and won his suit through the clear default of the holder to make the necessary presentation. The better and fuller interpretation of this section appears to me to be, 'you must present the note at the particular place it is made payable, not necessarily — as against the maker — on the day of its maturity, nor indeed, before suit; but if presentment is not made before suit, the costs being in the discretion of the Court, the maker will be protected from costs should — for instance — the funds to meet the note have been duly placed by him at the place named.'" To the same effect is the opinion of the majority of the Court in *Robertson v. Northwestern Register Co.*, (1910), 13 West. L. R. 613, *Cameron, J.* expressly approving the dictum in *Merchants' Bank v. Henderson, supra*, and decisions in *Freeman v. Canadian G. L. Ins. Co.* and *Sinclair v. Deacon, supra*. To the effect that the above is the correct interpretation of this section see *MacLaren, Bills, notes, and cheques*, p. 449, and *Russell*, on *Bills*, pp. 299 and 453. Comparing § 93, *supra* and the present section, *Russell* says (p. 299): "With respect to the corresponding section in reference to a promissory note, the Supreme Court of Nova Scotia has decided, in *Warner v. Symon-Kaye Syndicate*, that presentment is necessary before action is brought, in order to charge to maker. It is difficult to suppose that the legislature meant to make any difference in this regard between the maker of a note payable at a particular place named in the body of the note, and the acceptor of a bill made so payable, either in the body of the bill or by the terms of the acceptance. If the decision of the Nova Scotia Court is correct, it may, however, be held that there is a difference. Some stress was laid on the enactment in section 183 that the note 'must be presented for payment' at the place named. There are no such words in the corresponding section as to a bill of exchange. In section 85 it is said that subject to certain provisions a bill must be presented for payment, but the consequence of non-compliance that immediately follows is, that the drawer and indorsers shall be discharged. The case of the acceptor is dealt with in this section, and the apparent intention would seem to be that if the holder fails to present the bill before action, the acceptor shall nevertheless be bound to pay it, as he ought to be; but inasmuch as he should have had it presented, the costs of the unnecessary and strictly speaking premature action shall be in the discretion of the court. Reading the section as a whole it is difficult to see what the legislature meant if it did not mean this. The suggestion made by the Supreme Court of Nova Scotia, with reference to the corresponding words as to costs, that if the acceptor should succeed for want of presentment, the court may still deprive him of the costs usually given to a successful suitor, is ingenious, but far-fetched. There can be little doubt that



this provision was meant to enable the Court to deprive the holder of the costs that he has occasioned by his omission to present the bill." On the other hand it has been held that the clause referred to merely obviates presentment on the day of maturity and that presentment before action brought is necessary under this section. — *Warner v. Symon-Kaye Syndicate*, (1894), 27 N. S. 340; *Jones v. England*, (1906), 5 West. L. R. 83. In the latter case *Newlands, J.*, said: "Defendant also contends that, though the note was payable at the Union Bank of Canada at Regina, it was not before action brought presented there for payment (this is not denied by plaintiff), and therefore plaintiff cannot recover. In support of this contention plaintiff (defendant?) cites *Warner v. Symon-Kaye Syndicate*, 27 N. S. R. 340, where the Supreme Court of Nova Scotia held that where a note was payable at a particular place it must be presented for payment before action. Mr. Justice Graham, after citing sec. 86 of the Bills of Exchange Act, 1890, said: 'First there is the expression "must," which is imperative. Here, too, it is dealing with the necessity of presentment in the case of the maker and the maker only, because sub-secs. 2 and 3 deal with the necessity of presentment in order to make the indorser liable. Then the maxim *expressio unius exclusio alterius* is to be applied to this provision: "But the maker is not discharged by the omission to present the note for payment on the day it matures." Some effect must be given to a clause like that. The same may be said of this further clause: "If no place of payment is specified in the body of the note, presentment for payment is not necessary in order to render the maker liable." The provision as to costs will have effect too, in this as well as in the other case,' namely, that, if the maker succeeds on the ground that there has been no presentment proved, the Court may still deprive him of the costs usually given to a successful suitor.'" To the same effect are the dissenting opinion of *Richards, J. A.*, in *Robertson v. Northwestern Register Co.*, *supra*, and comments by *Falconbridge, Banking and bills of exchange*, pp. 506 and 638. See also *Teague v. Scoular*, (1908), 17 Man. 593.

*Waiver of presentment.* — If presentment is necessary under this section it may, of course be dispensed with in the same manner as before the adoption of this section. So a letter from maker to holder expressing inability to pay and asking further time, is a waiver of presentment. — *McDonnell v. Lowrey*, (1833), 3 U. C. Q. B. (O. S.) 302. So the obtaining of a renewal of a note waives presentment of that note. — *Robertson v. Northwestern Reg. Co.*, *supra*, *semble*. But waiver of presentment by indorser does not waive presentment to the maker. — *McLellan v. McLellan*, (1866), 17 U. C. C. P. 109, *semble*.

*Necessity of presentment as against accommodation maker.* — Where two joint makers are principal and surety to the knowledge of the holder, the surety is not discharged by failure to present and to give him notice of dishonour by principal. — *Gardner v. Shaver*, (1893), 13 C. L. T. 287. It has been held that where defendant made a note jointly with H. for H.'s accommodation, he was not discharged as against holder by holder's failure to present the note to H. for payment and to give notice of non-payment by H., even though in reliance upon the absence of such notice defendant, assuming that the note had been paid, allowed an opportunity to recover from H. to pass by and when defendant did receive notice H. had become insolvent. — *Wilson v. Brown*, (1881), 6 O. A. R. 87. In a late case, however, it has been held that an accommodation joint maker, known to be such by the holder, although not entitled to insist upon presentment and notice of dishonour, will be discharged if through the default of the holder in not promptly proceeding against the principal maker, he suffers damage. — *Hough v. Kennedy*, (1910), 13 West. L. R. 674.

*Where note is payable generally.* — It has been held that where debentures were payable at a bank which had ceased to exist, and which had had numerous branches, and no particular branch was designated, that it was unnecessary to aver presentment for payment at any particular place in an action on such debentures. — *Becher v. Amherstburgh*, (1874), 23 U. C. C. P. 602. Query, whether under this Act a promissory note so payable would be considered as payable generally. — See *McRobbie v. Torrance*, (1888), 5 Man. 114.

*No presentment necessary where note is payable generally.* — It is evident under this section that no presentment need be made where a note is payable generally. — *Canadian Co-operative Co. v. Trauniczek*, (1908), 8 West. L. R. 550. So a note payable at a particular place named at the foot or in the margin but not in the body of the note, need not be presented in order to bind the maker. — *Grant v. Heather*, (1885), 2 Man. 201.

*Demand note payable generally.* — It has been held that the amount of a note payable on demand by a Lower Canada debtor to a foreign creditor is recoverable with costs in Lower Canada, without proof of any demand made before institution of action. — *Shuter v. Paxton*, (1860), 5 L. C. Jur. 55. But a later case holds that although in an action against the maker of a note payable on demand and generally, want of presentment is not a ground for demurrer, yet if an action on such a note is brought before demand is made, the defendant upon tender of debt with interest before plea is entitled to judgment against the plaintiff for his costs. — *Archer v. Lortie*, (1877), 3 Q. L. R. 159. See as to this section generally *McIver v. McFarland*, (1824), Tay. 113; *Macaulay v. McFarlane*, (1840), Rob. & Jos. Dig. 493; *Chandler v. Beckwith*, (1838), 2 N. B. 423; *Ratchford v. Griffith*, (1843), 4 N. B. 112; *Biggs v. Wood*, (1885), 2 Man. 272.

**As to endorser. Place where. What sufficient. 184.** Presentment for payment is necessary in order to render the endorser of a note liable. 2. Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an endorser liable. 3. When a place of payment is indicated

by way of memorandum only, presentment at that place is sufficient to render the endorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Imp. § 87. Due presentment for payment is necessary to bind the indorser. — *Siddall v. Gibson*, (1858), 17 U. C. Q. B. 98. As to the necessity of such presentment, see § 85. As to the time, manner, and place of such presentment, see §§ 85—90, and 183 *supra*, and § 186, *infra*. As to waiver of such presentment see §§ 92, 106, and 183, *supra*. As to what constitutes sufficient presentment at a particular place, see notes to §§ 88—90 and § 98. See generally § 186, *infra*.

**Maker. Engagement. Estoppel. 185.** The maker of a promissory note, by making it: a) Engages that he will pay it according to its tenor; b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse.

Imp. § 88. For the definition of a holder in due course see § 56 *supra*. By subsection (b) the maker of a note payable to a bankrupt, even though he was in ignorance of the bankruptcy, is precluded from changing the payee's capacity to indorse it over, and cannot deny such capacity in a suit by the indorsee. — *Perkins v. Beckett*, (1878), 29 U. C. C. P. 395. But this section is subject to the modification of § 58 and if the payee's incapacity was due to the illegality of its existence (an unchartered corporation) the burden of proof devolves on the plaintiff to show that he took in good faith without notice of the illegality. — *Canadian Bank of Commerce v. Rogers*, (1911), 23 O. L. R. 109.

**Application of Act to notes. Terms corresponding. Provisions inapplicable. 186.** Subject to the provisions of this Part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes. 2. In the application of such provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first endorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order. 3. The provisions of this Act as to bills relating to: a) Presentment for acceptance; b) Acceptance; c) Acceptance *supra* protest; d) Bills in a set; do not apply to notes.

Imp. § 89.

**Protest of foreign notes. 187.** Where a foreign note is dishonoured, protest thereof is unnecessary, except for the preservation of the liabilities of endorsers.

Imp. § 89.

## Schedule.

### Form A.

#### Noting for non-acceptance.

(Copy of bill and endorsements).

On the 19 , the above bill was, by me, at the request of presented for acceptance to E. F., the drawee, personally (or, at his residence, office, or usual place of business), in the city (town or village) of and I received for answer: " "; The said bill is therefore noted for non-acceptance.

A. B.,

Notary Public.

(Date and place.)

19 .

Due notice of the above was by me served upon { A. B., } the { drawer, } personally, on the day of (or, at his residence, office, or usual place of business) in , on the day of (or, by depositing such notice, directed to him at in His Majesty's post office in the city (town or village), on the day of . and prepaying the postage thereon.)

A. B.,

Notary Public.

(Date and place.)

19 .

### Form B.

#### Protest for non-acceptance or for non-payment of a bill payable generally.

(Copy of bill and endorsements.)

On this day of , in the year 19 , I, A. B., notary public for the Province of , dwelling at , in the Province of , at the request of , did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the { drawer } thereof personally (or, at his residence, office, or usual place of business) { acceptor }



Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer, and endorsers (or drawer and endorsers) of the said bill, and other parties thereto or therein concerned, for all exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of { acceptance  
payment } of the said bill.

(Protested in duplicate.)

A. B.,  
Notary public.

**Protest for non-acceptance or for non-payment of a bill payable at a stated place.**

On this                      day of                      in the year 19                      , I, A. B., notary public for the Province of                      , dwelling at                      , in the Province of                      , at the request of                      , did exhibit the original bill of exchange whereof a true copy is above written, unto E. F., the { drawee } thereof, at                      , being the stated place where the said bill is payable, and there speaking to                      did demand { acceptance } of the said bill: unto which demand he answered: “                      ”.

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer, and endorsers (or drawer and endorsers) of the said bill and all other parties thereto or therein concerned, for all exchange, re-exchange, costs, damages, and interest, present and to come for want of { acceptance  
payment } of the said bill

(Protested in duplicate).

A. B.,  
Notary Public.

**Protest for non-payment of a bill noted, but not protested for non-acceptance.**

*If the protest is made by the same natory who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, and begin with the words "and afterwards on, etc.," continuing as in the last preceding form, but introducing between the words "did" and "exhibit" the word "again", and in parenthesis, between the words "written" and "unto", the words: "and which bill was by me duly noted for non-acceptance on the                  day of                  ."*

But if the protest is not made by the same notary, then it should follow a copy of the original bill and endorsements and noting marked on the bill—and then in the protest introduce, in a parenthesis, between the words “written” and “unto”, the words: “and which bill was on the \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, notary public for the Province of \_\_\_\_\_ noted for non-acceptance, as appears by his note thereof marked on the said bill”.

### Protest for non-payment of a note payable generally.

On this                      day of                      , in the year 19                      , I, A. B., notary public for the Province of                      , dwelling at                      , in the Province of                      , at the request of                      , did exhibit the original promissory note, whereof a true copy is above written, unto                      the promisor, personally ( *or*, at his residence, office *or* usual place of business,) in                      , and speaking to himself (*or* his wife, his clerk *or* his servant, etc.) did demand payment thereof; unto which demand { 

he
she

 } answered: “                      ”.

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and endorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

(Protested in duplicate.)

A. B.,  
*Notary Public.*

*Form F.***Protest for non-payment of a note payable at a stated place.***(Copy of note and endorsements.)*

On this                      day of                      , in the year 19    , I, A. B., notary public for the Province of                      , dwelling at                      , in the Province of                      , at the request of                      , did exhibit the original promissory note, whereof a true copy is above written, unto                      the promisor, at                      , being the stated place where the said note is payable, and there, speaking to                      did demand payment of the said note, unto which demand the awered: "                      ".

Whereof I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and endorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,  
Notary Public.

*Form G.***Notarial notice of a noting, or of a protest for non-acceptance, or of a protest for non-payment of a bill.***(Place and date of noting or of protest.)*

1st.

To P. Q. (*the drawer*)

at

Sir,

Your bill of exchange for \$                      , dated at                      the                      day of                      , upon E. F., in favour of C. D., payable                      days after { sight } { date } was this day, at the request of

duly { noted } { protested } by me for { non-acceptance } { non-payment }

A. B.,  
Notary public.

*(Place and date of noting or of protest.)*

2nd.

To C. D., (*endorser*  
(*or F. G.*)

at

Sir,

Mr. P. Q.'s bill of exchange for \$                      , dated at                      the                      day of                      , upon E. F., in your favour (or in favour of C. D.,) payable                      days after { sight, } { date, } and by you endorsed, was this day at the request of                      duly { noted } { protested } by me for

{ non-acceptance }  
{ non-payment }

A. B.,  
Notary Public.

*Form H.***Notarial notice of protest for non-payment of a note.***(Place and date of protest.)*

To

at

Sir,

Mr. P. Q.'s promissory note for \$                      , dated at                      , the                      day of                      payable { days } { months } after date to { you } { E. F. } or order, and endorsed by you, was this day, at the request of                      , duly protested by me for non-payment.

A. B.,  
Notary Public.



*Form I.*

**Notarial service of notice of a protest for non-acceptance or non-payment of a bill, or note.**  
(to be subjoined to the protest).

And afterwards, I, the aforesaid protesting notary public, did serve due notice, in the form prescribed by law, of the foregoing protest for { non-acceptance } of the { bill } thereby protested upon { P. Q., } the { drawer } personally, on the \_\_\_\_\_ day of (or, at his residence, office or usual place of business) in \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_; (or, by depositing such notice, directed to the said { P. Q., } at \_\_\_\_\_, in His Majesty's post office in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, and prepaying the postage thereon).

In testimony whereof, I have, on the last mentioned day and year, at \_\_\_\_\_ aforesaid, signed these presents. A. B.,

*Notary Public.*

*Form J.*

**Protest by a justice of the peace (where there is no notary) for non-acceptance of a bill, or non-payment of a bill or note.**

(Copy of bill or note and endorsements.)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 19\_\_\_\_, I, N. O., one of His Majesty's justices of the peace for the district (or county, etc.) of \_\_\_\_\_, in the province of \_\_\_\_\_, dwelling at (or near) the village of \_\_\_\_\_, in the said district, there being no practising notary public at or near the said village (by other legal clause), did, at the request of \_\_\_\_\_ and in the presence of \_\_\_\_\_ well known unto me, exhibit

the original { bill } whereof a true copy is above written unto P. Q., the { drawer } thereof, personally (or at his residence, office or usual place of business) in \_\_\_\_\_ and speaking to himself (his wife, his clerk or his servant, etc.,) did demand { acceptance } thereof, unto which demand { he } answered: " \_\_\_\_\_" { payment } { note }

Wherefore I, the said justice of the peace, at the request aforesaid, have protested, and by these presents to protest against the { drawer and endorsers } of the said { bill } { promisor and endorsers } { note } and all other parties thereto and therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of { acceptance } of the said { bill } { payment } { note }.

All which is by these presents attested by the signature of the said (the witness) and by my hand and seal.

(Protested in duplicate.)

(Signature of the witness)

(Signature and seal of the J.P.)

## **b) 7 & 8 Edw. 7, c. 8. An Act to amend the Bills of Exchange Act (10th April, 1908).**

[1. Amends R. S. 1906, c. 119, § 133, and is there incorporated.]

### **Public Holidays.<sup>1)</sup>**

#### **a) R. S. 1906, c. 106. An Act respecting Dominion Day.**

**Short title.** 1. This Act may be cited as the *Dominion Day Act*.

**Dominion Day a holiday.** 2. Throughout Canada, in each and every year, the first day of July, not being a Sunday, shall be a legal holiday, and shall be kept and observed as such, under the name of "Dominion Day."

R. S., c. 111, § 1.

<sup>1)</sup> See further as to bank holidays the *Bills of Exchange Act*, § 43, *supra*.

**When 1st of July is a Sunday.** 3. When the first day of July is a Sunday, the second day of July shall be, in lieu thereof, throughout Canada, a legal holiday, and shall be kept and observed as such under the same name.

R. S., c. 111, § 2.

### **b) R. S. 1906, c. 107. An Act respecting Victoria Day.**

**Short title.** 1. This Act may be cited as the *Victoria Day Act*.

**Victoria Day a holiday.** 2. Throughout Canada, in each and every year, the twenty-fourth day of May, being the birthday of Her late Majesty Queen Victoria, shall, when not a Sunday, be a legal holiday and shall be kept and observed as such under the name of "Victoria Day."

1 Edw. 7, c. 12, § 1.

**If 24th of May is a Sunday.** 3. When the twenty-fourth day of May is a Sunday, the twenty-fifth day of May shall be, in lieu thereof, a legal holiday throughout Canada, and shall be kept and observed as such under the same name.

1 Edw. 7, c. 12, § 2.

## **Laws of the Provinces.**

### **I. Alberta.**

#### **Law in force.**

The laws of England relating to civil and criminal matters as they existed on 15th July 1870, in so far as they are applicable and have not been amended or repealed by Imperial legislation extending to the Province, or by Dominion legislation, or by local Acts of the Legislature of the North-West Territories, prior to 1st September, 1905, or by Acts of the Legislature of Alberta since that date, are in force<sup>1)</sup>.

#### **Statutes.<sup>2)</sup>**

#### **Application of Law.**

### **4 & 5 Edw. 7, c. 3. An Act to establish and provide for the Government of the Province of Alberta (20th July, 1905).<sup>3)</sup>**

16. All laws and all orders and regulations made thereunder, so far as they are not inconsistent with anything contained in this Act, or as to which this Act contains no provision intended as a substitute therefor, and all courts of civil and criminal jurisdiction, and all commissions, powers, authorities, and functions, and all officers and functionaries, judicial, administrative, and ministerial, existing immediately before the coming into force of this Act, in the territory hereby established as the Province of Alberta, shall continue in the said Province as if this Act and the Saskatchewan Act had not been passed; subject nevertheless, except with respect to such as are enacted by or existing under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, to be repealed, abolished or altered by the Parliament of Canada, or by the legislature of the said Province, according to the authority of the Parliament or of the said legislature: 1. Provided that all powers, authorities, and functions which under any

<sup>1)</sup> R. S. C. 1906, c. 62, § 12, reprinted in full, *infra*, sub North-West Territories; 4 & 5 Edw. 7, c. 3, § 16, reprinted in full, *infra*. — <sup>2)</sup> As in force 1st January, 1912. — <sup>3)</sup> Reprinted in *Revised Statutes of Canada*, 1906, Vol. 4, pp. 3183—3199.



law, order or regulation were, before the coming into force of this Act, vested in or exercisable by any public officer or functionary of the North-West Territories shall be vested in and exercisable in and for the said Province by like public officers and functionaries of the said Province when appointed by competent authority. (2. Relates to Courts.) 3. All societies or associations incorporated by or under the authority of the legislature of the North-West Territories existing at the time of the coming into force of this Act which include within their objects the regulation of the practice of, or the right to practise, any profession or trade in the North-West Territories, such as the legal or the medical profession, dentistry, pharmaceutical chemistry and the like, shall continue, subject, however, to be dissolved and abolished by order of the Governor in Council, and each of such societies shall have power to arrange for and effect the payment of its debts and liabilities, and the division, disposition, or transfer of its property. 4. Every joint stock company lawfully incorporated by or under the authority of any Ordinance of the North-West Territories shall be subject to the legislative authority of the Province of Alberta if: a) The head office or the registered office of such company is at the time of the coming into force of this Act situate in the Province of Alberta; and b) The powers and objects of such company are such as might be conferred by the legislature of the said Province and not expressly authorized to be executed in any part of the North-West Territories beyond the limits of the said Province.

### Partnership.

#### a) Cons. Ords., 1905, c. 94. An Ordinance to declare and amend the Law of Partnership.<sup>1)</sup>

##### *Short title.*

**Short title.** 1. This Ordinance may be cited as *The Partnership Ordinance, 1899.*

##### *Interpretation.*

**Interpretation.** 2. In this Ordinance, unless the context otherwise requires: 1. The expression "business" includes every trade, occupation, or profession; 2. "Court" shall mean the Supreme Court of the North-West Territories, and any Judge of the Court may at any time, whether sitting in chambers or in court, exercise all the powers conferred by this Ordinance upon the Court.

This section must be applied mutatis mutandis to the judicial organization of the Province of Alberta.

##### *Partnerships generally.*

[3—46. Are identical in all material respects with the Imperial *Partnership Act, 1890*, (53 & 54 Vic, c. 39) §§ 3—46.]

Acts outside the scope of firm business. — *Morris v. Sobey* (1909), 2 Alb. 434.

##### *Limited partnerships.*

**Limited partnerships may be formed.** 47. Limited partnerships for the transaction of any mercantile, mechanical, manufacturing, or other business within the Territories may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities hereinafter mentioned.

**Of whom to consist.** 48. Such partnerships may consist of one or more persons who shall be called general partners, and of one or more persons who contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners.

**Liability of general and special partner.** 49. General partners shall be jointly and severally responsible as general partners are by law, but a special partner shall not be liable for the debts of the partnership, except in respect of the amounts by him contributed to the capital.

**General partners only to transact business, etc.** 50. The general partners only shall be authorised to transact business and sign for the partnership, and to bind the same.

<sup>1)</sup> N. W. T. Ords., 1899, c. 7.

**Certificate to be signed. Contents of. 51.** The persons desirous of forming such partnership shall make and severally sign a certificate which shall contain: 1. The name or firm under which the partnership is to be conducted; 2. The general nature of the business intended to be transacted; 3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their usual places of residence; 4. The amount of capital which each special partner has contributed; 5. The period at which the partnership is to commence and the period at which it is to terminate.

**Form of. 52.** The certificate shall be in the words or to the effect of form A given in the Schedule to this Ordinance, and shall be signed by the several persons forming the partnership, before a notary public, who shall duly certify the same.

**Where to be filed. To be recorded. 53.** The certificate so signed and certified shall, when the principal place of business of the partnership is or is to be situate within the district of a deputy clerk of the Supreme Court, be filed in the office of such deputy clerk, otherwise it shall be filed in the office of the clerk of the said Court for the judicial district in which such principal place of business is or is to be situate, and the certificate shall be recorded by such clerk or deputy clerk at full length in a book to be kept for that purpose and open to public inspection.

**Fees for filing and searches. 54.** For filing and recording each such certificate the clerk or deputy clerk shall be entitled to receive the sum of twenty-five cents and shall also be entitled to receive from every person searching in the book where such certificate is so recorded the sum of ten cents for each such search.

**Partnerships not formed until certificate filed. 55.** No such partnership shall be deemed to have been formed until a certificate has been made, certified, filed, and recorded as above directed; and if any false statement is made in such certificate, all the persons interested in the partnership shall be liable for all the engagements thereof as general partners.

**Certificates of continuance. 56.** Every renewal or continuance of a limited partnership beyond the time originally fixed for its duration shall be certified, filed, and recorded in the manner herein required for its original formation; and every such partnership otherwise renewed or continued shall be deemed a general partnership.

**What alterations to be deemed dissolution. 57.** Every alteration made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership, and every such partnership in any manner carried on after any such alteration has been made, shall be deemed a general partnership, unless renewed as a special partnership, according to the provisions of the next preceding section.

**Firm name. 58.** The business of a limited partnership shall be conducted under a firm name in which the names of the general partners or some one of them only shall be used; and if the name of a special partner is used in such firm name with his privity he shall be deemed a general partner.

**Liability of general partners to actions. 59.** Actions in relation to the business of the partnership may be brought and conducted by and against the general partners in the same manner as if there were no special partner.

**Restrictions upon stock of special partners. 60.** No part of the sum which a special partner has contributed to the capital shall be withdrawn by him or paid or transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest does not reduce the original amount of the capital; and if after the payment of such interest any profits remain to be divided, he may also receive his portion of such profits.

**When special partner liable to refund. 61.** If it appears that by the payment of interest or profits to a special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the deficient capital, with interest.

**Privileges of special partners. 62.** A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise;



and if he interferes contrary to these provisions he shall be deemed a general partner.

**General partners liable to account. 63.** The general partners shall be liable to account to each other and to the special partners for their management of the concern in like manner as other partners.

**Creditors preferred to special partners. 64.** In case of the insolvency of the partnership no special partner shall under any circumstances be allowed to claim as creditor until the claims of all the other creditors of the partnership have been satisfied.

**No premature dissolution without notice, etc. 65.** No dissolution of a limited partnership by the acts of the parties shall take place previous to the time specified in the certificate of its formation or in the certificate of its renewal, until a notice of such dissolution has been filed in the office in which the original certificate was recorded, and has been published once in each week for three weeks in a newspaper published in the district where the partnership has its principal place of business and for the same time in *The North-West Territories Gazette*.

**Limited partnerships subject to special provisions. 66.** The provisions of the sections of this Ordinance numbered from 2 to 46, both inclusive, shall as regards limited partnerships be subject to the special provisions herein contained regarding such partnerships.

#### *Supplemental.*

**Saving for rules of equity and common law. 67.** The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Ordinance.

**Commencement of Ordinance. 68.** This Ordinance shall come into operation on the first day of July, one thousand eight hundred and ninety-nine.

#### *Schedule.*

##### *Form A. Certificate of Partnership.*

We, the undersigned, do hereby certify that we have entered into co-partnership under the style or firm of (*B. D. & Co.*) as (*Grocers and Commission Merchants*), which firm consists of (*A. B.*) residing usually at \_\_\_\_\_ and (*C. D.*) residing usually at \_\_\_\_\_ as general partners; and (*E. F.*) residing usually at \_\_\_\_\_, (and (*G. H.*) residing usually at \_\_\_\_\_ as special partners, the said (*E. F.*) having contributed \$ \_\_\_\_\_ and the said (*G. H.*) \$ \_\_\_\_\_, to the capital.

The said partnership commenced on the \_\_\_\_\_ day of \_\_\_\_\_ 1 \_\_\_\_\_, and terminates on the \_\_\_\_\_ day of \_\_\_\_\_ 1 \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 1 \_\_\_\_\_

(Signed) A. B.  
C. D.  
E. F.  
G. H.

Signed in the presence of me, )  
L. M.,  
Notary Public. )

#### **b) St. 1908, c. 5. An Act respecting Partnerships (5th March, 1908).**

##### *Registration of copartnerships.*

**Declarations of partnerships to be filed in certain cases. Where parties absent.**

**1.** All persons associated in partnership for trading, manufacturing, contracting or mining purposes in the Province shall cause to be filed in the office of the registration clerk of the registration district for registration of chattel mortgages and other transfers of personal property in the Province, in which they carry on or intend to carry on business, a declaration in writing, signed by the several members of such partnership: Provided, however, that if any of the said members be absent from the place where they carry on or intend to carry on business at the time of making such declaration, then such declaration shall be signed by the members present, in their own names and also for their absent co-members, under their special authority to that effect; such special authority to be at the same time filed with the said registration clerk and annexed to such declaration.

**Contents of declaration.** 2. Such declaration shall be in the form A in the Schedule to this Act, and shall contain the names, surnames, additions, and residences of each and every partner or associate as aforesaid, and the name, style, or firm under which they carry on or intend to carry on such business, and stating also the time during which the partnership has existed and is to exist, also declaring that the persons therein named are the only members of such co-partnership or association.

**Time for filing declaration. Changes in firm.** 3. Such declaration shall be filed within six months next after the formation of any such partnership, or in the case of partnerships existing at the commencement of this Act and not already registered under the provisions of the law heretofore in force in that regard, within six months after the commencement of this Act; or at any time upon the fiat of a judge of the Supreme Court or of the District Court of the district where such partnership carries on business; and a similar declaration shall in like manner be filed when and so often as any change or alteration of partnership takes place in the membership of such partnership, or in the name, style, or firm under which they intend to carry on business or in the place of residence of each member of said firm, and every new declaration shall state the alteration in the partnership.

*Person using trade-name, registration.*

**Individual using trade name.** 4. Every person engaged in business for trading, manufacturing, contracting, or mining purposes, and who is not associated in partnership with any other person or persons, but who uses as his business style some name or designation other than his own, or who in such business uses his own name with the addition of "and company," or some other word or phrase indicating a plurality of members in the firm, shall cause to be filed, as aforesaid, a declaration of the fact in writing, signed by such person.

**Contents of individual declaration.** 5. The declaration last aforesaid shall contain the name, surname, addition, and residence of the person making the same, and the name, style, or firm under which he carries on or intends to carry on business, and shall also state that no other person is associated with him in partnership, and the same shall be filed within six months of the time when such style is first used, or, in the case of persons so engaged in business at the date of the commencement of this Act so using words indicating a plurality of members in the firm and who have not complied with the requirements of the law heretofore in force in that regard, within six months after the commencement of this Act; or at any time upon the fiat of a judge of the Supreme Court or of the District Court of the district where such person carries on business.

*Registration books.*

**Registration books.** 6. It shall be the duty of the registration clerk aforesaid to keep two alphabetical index books of all declarations of copartnership filed in his office, in pursuance of the provisions hereof.

**Firm index books.** 7. In one of such books, hereinafter called the "firm index book," the registration clerk shall enter in alphabetical order the style of the respective firms in respect of which declarations have been filed in his office, and shall place opposite each entry the names of the person or persons composing such firm, and the date of the receipt by him of the declaration in the manner shown in form B in the Schedule to this Act.

**Individual index book.** 8. In the second of such books, hereinafter called the "individual index book," the said registration clerk shall enter in alphabetical order the names of the respective members of each of such firms, and shall place opposite such entry the style of the firm of which such person is a member, and the date of the receipt of the declaration in the manner shown in form C in the Schedule to this Act.

*Penalty for non-registration.*

**Failure to comply with Act. Penalty.** 9. Each and every member of any partnership or other persons required to register a declaration under the provisions of this Act, who fails to comply with the requirements aforesaid, shall forfeit the sum of one hundred dollars to be recovered before any court of competent jurisdiction by any person suing as well on his own behalf as on behalf of His Majesty; and half of such penalty shall belong to the general revenue fund of the Province, and the other



half to the party suing for the same, unless the suit be brought as it may be by the Attorney-General on behalf of His Majesty only, in which case the whole of the penalty shall belong to the Province aforesaid.

9a. Any action or other proceeding instituted in any court in the Province by any unregistered partnership or by any other person required to file a declaration under the provisions of this Act who fails to comply with the requirements aforesaid may be stayed on application of the defendant or party opposite in interest until such partnership becomes registered, or until such declaration is so filed.

#### *Effect of declaration.*

**Binding effect of declaration.** 10. The allegations made in the declaration aforesaid can not be controverted by any person who has signed the same, nor can they be controverted as against any party not being a partner by a person who has not signed the same, but who was really a member of the partnership therein mentioned at the time such declaration was made.

**Liability of persons signing declaration. Failure to declare does not exempt from liability. Partners' rights inter se.** 11. Until a new declaration is made and filed by him or by his copartners or any of them as aforesaid, no such signer shall be deemed to have ceased to be a partner; but nothing herein contained shall exempt from liability any person who, being a partner, fails to declare the same, as already provided, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or they may be sued alone, and if judgment is recovered against them any other partner or partners may be sued jointly or severally in an action on the original cause of action upon which such judgment was rendered; nor shall anything in this Act be construed to affect the rights of any partners with regard to each other, except that no such declaration as aforesaid shall be controverted by any signer thereof.

#### *Declaration of dissolution.*

**Declaration of dissolution.** 12. Upon the dissolution of any partnership any or all of the persons who compose such partnership may sign and file a declaration certifying the dissolution of the partnership in the form D in the Schedule to this Act.

#### *Registration fees.*

**Fees.** 13. The said registration clerk shall be entitled for filing a declaration under this Act to a fee of fifty cents, and for searches made in each of such books the following fees and no more: For searching in the firm index book, each firm,

10 cents; For searching in the individual index book, each name,  
10 cents; For each certificate, when required, 25 cents.

### *Schedule.*

#### *Form A. Declaration of copartnership.*

Province of Alberta: ) We,

)

of in (occupation), hereby certify:

1. That we have carried on and intend to carry on trade and business as  
at in partnership under the name and firm of

or I (or we) the undersigned, of in  
hereby certify:

1. That I (or we) have carried on and intend to carry on trade and business as  
at in partnership with of

and of  
(as the case may be.)

2. That the said partnership has subsisted since the day of one thousand

3. And that we (or I, or we) and the said of  
and of are and have been since the said day the only  
members of the said partnership.

Witness our hands at this day of  
one thousand .

*Form B. Firm Index Book.*

Style of firm.	Names of persons composing the firm and their residences.	Date of filing declaration.
John Smith & Co.	John Smith, Edmonton	Sept. 15, 1908
James Abott & Son	Edward Ives, Wetaskiwin	Sept. 10, 1908
Bernard & Johnson	James Abbott, Calgary George Abbott, Calgary Arthur Bernard, Macleod Alexander Johnson, Macleod	March 1, 1908

*Form C. Individual Index Book.*

Name of individual and residence.	Style of firm of which a member.	Date of filing declaration.
Abbott, James, Calgary	James Abbott & Son	Sept. 10, 1908
Abbott, George, Calgary	James Abbott & Son	Sept. 10, 1908
Bernard, Arthur, Macleod	Bernard & Johnson	March 1, 1908
Johnson, Alex., Macleod	Bernard & Johnson	March 1, 1908

*Form D. Declaration of Dissolution of Partnership.*

Province of Alberta ) I,

)

formerly a member of the firm of \_\_\_\_\_ carrying on business as  
 at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ under the style of  
 do hereby certify that the said partnership was on the \_\_\_\_\_ day of  
 dissolved.

Witness my hand at \_\_\_\_\_ the \_\_\_\_\_ day of  
 one thousand \_\_\_\_\_

A. B.

**Companies.****a) Cons. Ords., 1905, c. 61. An Ordinance respecting Companies.<sup>1)</sup>***Preliminary.*

**Short title.** 1. This Ordinance may be cited for all purposes as *The Companies Ordinance*.

1901, c. 20, § 1.

**Territorial Secretary ex officio Registrar.** 2. This Ordinance shall be administered by the Territorial Secretary who shall be ex officio Registrar of Joint Stock Companies.

1901, c. 20, § 2.

**Interpretation.** 3. In the construction of this Ordinance and of the Schedules thereto and of any rules that may be made thereunder if not inconsistent with the context or subject matter: 1. "Company" shall mean a company incorporated under this Ordinance; 2. "Court" shall mean the Supreme Court of the North-West Territories and shall include a judge thereof; 2. "Judge" shall mean a judge of the said Court; 4. "Registrar" shall mean Registrar of Joint Stock Companies; and the expression "Registrar" or "Registrar of Joint Stock Companies" shall include the assistant or acting assistant Territorial Secretary and any person appointed by the Territorial Secretary as registrar of joint stock companies and his deputy and any one acting for him; 5. "Prospectus" means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares, stock, or debentures of a company.

1901, c. 20, § 3.

<sup>1)</sup> N. W. T. Ords. 1901, c. 20. Incorporating the amendments made by St. 1907, c. 5, 1908, c. 10, 1909, c. 5.



**Prohibition of partnerships exceeding certain number. 4.** No company, association, or partnership consisting of more than twenty persons shall hereafter be formed for the purpose of carrying on any business to which the authority of the Legislative Assembly extends that has for its object the acquisition of gain by the company, association, or partnership or by the individual members thereof, unless it is registered as a company under this Ordinance or is formed in pursuance of some other Ordinance of the Legislative Assembly.

1901, c. 20, § 4.

### *Part I. Constitution, Incorporation, and Registration.*

#### *Memorandum of association.*

**Mode of forming company. Proviso to be inserted in memorandum of association. 5.** Any three or more persons associated for any lawful purpose to which the authority of the Legislative Assembly extends may by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Ordinance in respect of registration, form an incorporated company with or without limited liability. Provided that nothing herein contained shall be deemed to confer upon the company any powers to which the jurisdiction of the Legislature of the Province of Alberta does not extend, and particularly shall not be deemed to confer the right to issue promissory notes in the nature of bank notes; and all the powers in the said memorandum of association contained shall be exercisable subject to the provisions of the laws in force in Alberta and regulations made thereunder in respect of matters therein referred to, and especially with respect to the construction and operation of railways, telegraph and telephone lines, the business of insurance and any other business with respect to which special law and regulations may now be or may hereafter be put in force.

1901, c. 20, § 5; 1907, c. 5, § 13.

**Mode of limiting liability. 6.** The liability of the members of a company formed under this Ordinance may according to the memorandum of association be limited either to the amount (if any) unpaid on the shares respectively held by them or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

1901, c. 20, § 6.

**Memorandum of association of a company limited by shares. 7.** Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares (hereinafter referred to as a company limited by shares) the memorandum of association shall contain the following things, that is to say: a) The name of the proposed company with the addition of the word "Limited" as the last word in such name; b) The objects for which the proposed company is to be established; c) The place in the Territories in which the registered office of the company is proposed to be situated; d) The time of the existence of the proposed company if it is intended to secure incorporation for a fixed period; e) A declaration that the liability of the members is limited; f) The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount; subject to the following regulations: a) That no subscriber shall take less than one share; b) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes; c) That each subscriber of the memorandum of association shall be the bona fide holder in his own right of the share or shares for which he has subscribed in the memorandum of association.

1901, c. 20, § 7.

**Memorandum of association of a company limited by guarantee. 8.** Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up (hereinafter referred to as a company limited by guarantee) the memorandum of association shall contain the following things, that is to say: a) The name of the proposed company with the addition of the words "Limited by Guarantee" as the last words in such name; b) The objects for which the proposed company is to be established; c) The place in the Territories in which the registered office of the company is proposed to be situated; d) A declaration that each member undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member or within one year afterwards for payment of the debts and liabilities of the company

contracted before the time at which he ceases to be a member and of the costs, charges and expenses of winding up the company and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding a specified amount.

1901, c. 20, § 8.

**Memorandum of association of an unlimited company. 9.** Where a company is formed on the principle of having no limit placed on the liability of its members (hereinafter referred to as an unlimited company) the memorandum of association shall contain the following things, that is to say: a) The name of the proposed company; b) The objects for which the proposed company is to be established; c) The place in the Territories in which the registered office of the company is proposed to be situated.

1901, c. 20, § 9.

**Signature and effect of memorandum of association. 10.** The memorandum of association shall be signed by each subscriber in the presence of and be attested by one witness at the least; and it shall when registered bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto and there were in the memorandum contained on the part of himself, his heirs, executors, and administrators a covenant to observe all the conditions of such memorandum subject to the provisions of this Ordinance.

1901, c. 20, § 10.

#### *Articles of association.*

**Regulations to be prescribed by articles of association. 11.** The memorandum of association may in the case of a company limited by shares and shall in the case of a company limited by guarantee or unlimited be accompanied when registered by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. The articles shall be expressed in separate paragraphs numbered arithmetically; they may adopt all or any of the provisions contained in the table marked A in the first Schedule hereto; they shall in the case of a company (whether limited by guarantee or unlimited) that has a capital divided into shares state the amount of capital with which the company proposes to be registered; and in the case of a company (whether limited by guarantee or unlimited) that has not a capital divided into shares state the number of members with which the company proposes to be registered for the purpose of enabling the Registrar to determine the fees payable on registration. In a company limited by guarantee or unlimited and having a capital divided into shares, each subscriber shall take one share at the least and shall write opposite to his name in the memorandum of association the number of shares he takes.

1901, c. 20, § 11.

**Application of tablea. 12.** In the case of a company limited by shares if the memorandum is not accompanied by articles of association or in so far as the articles do not exclude or modify the regulations contained in the table marked A in the first Schedule hereto the last mentioned regulations shall so far as the same are applicable be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association and the articles had been duly registered.

1901, c. 20, § 12.

**Signature and effect of articles of association. 13.** The articles of association shall be signed by each subscriber in the presence of and be attested by one witness at least. When registered they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators to conform to all the regulations contained in such articles subject to the provisions of this Ordinance; and all moneys payable by any member of the company in pursuance of the conditions and regulations of the company or any of such conditions or regulations shall be deemed to be a debt due from such member to the company in the nature of a specialty debt.

1901, c. 20, § 13.

#### *Registration.*

**Registration. 14.** The memorandum of association and articles of association shall be delivered to the Registrar who shall retain and register the same.

1901, c. 20, § 14.



**Fees. 15.** There shall be paid to the Registrar by the company having a capital divided into shares in respect of the several matters mentioned in the table marked B in the first Schedule hereto the several fees therein specified or such smaller fees as the Lieutenant-Governor in Council may from time to time direct; and by a company not having a capital divided into shares in respect of the several matters mentioned in the table marked C in the first Schedule hereto the several fees therein specified or such smaller fees as the Lieutenant-Governor in Council may from time to time direct. 2. The fees received under this section shall form part of the general revenue fund of the Territories.

1901, c. 20, § 15.

**Certificate of incorporation. 16.** Upon the registration of the memorandum of association and of the articles of association in cases where articles of association are required by this Ordinance or by the desire of the parties to be registered the Registrar shall certify under his hand and seal of office that the company is incorporated and in the case of a limited company that the company is limited and in the case of a mining company the liabilities of the members whereof is specially limited under section 63 hereof that the said company is so specially limited under said section 63; and such certificate shall be published in the *Official Gazette*. 2. The incorporation of the company shall take effect from the date of incorporation mentioned in the certificate of incorporation.

1901, c. 20, § 16.

**Effect of registration. 17.** The subscribers of the memorandum of association together with such other persons as from time to time become members of the company shall thereupon be a body corporate under the name contained in the memorandum of association capable forthwith of exercising all the functions of an incorporated company and having perpetual succession and a common seal with power to hold lands but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned.

1901, c. 20, § 17.

**Registrar's certificate conclusive evidence. 18.** Any certificate of the incorporation of the company given by the Registrar under his seal of office shall be conclusive evidence that all the requirements of the Ordinance in respect of registration and of matters precedent and incidental thereto have been complied with. 2. Any certificate of the incorporation of any company given by the Registrar shall be received in evidence as if it were the original certificate; and any copy of or extract from any of the documents kept and registered at the office for the registration of joint stock companies if duly certified to be a true copy or extract under the hand of the Registrar and his seal of office shall for all purposes be received in evidence as of equal validity with the original document.

1901, c. 20, § 18.

**Copies of memorandum etc., to be given to members. Penalty. 19.** A copy of the memorandum of association having annexed thereto the articles of association if any shall be forwarded to every member at his request on payment of the sum of \$1 or such less sum as may be prescribed by the company for each copy; and if any company makes default in forwarding a copy of the memorandum of association and articles of association if any to a member in pursuance of this section the company so making default shall upon summary conviction for each offence be liable to a penalty not exceeding \$5; and every director, manager, secretary, and officer of the company who shall knowingly and wilfully authorize or permit such default shall upon summary conviction be liable to the like penalty.

1901, c. 20, § 19.

**Prohibition against identity of names. 20.** No company shall register under a name by which a subsisting company is lawfully carrying on business in the Province, or so nearly resembling the same as in the opinion of the Registrar to be calculated to deceive except in a case where such subsisting company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires, and if such company through inadvertence or otherwise is without such consent as aforesaid registered by a name identical with that by which a subsisting company is thus lawfully carrying on business or so nearly resembling the same as to be calculated to deceive such first mentioned company shall upon the direction of the Registrar change its name.

1907, c. 5, § 13.

**Change of name. 21.** Any company with the sanction of a special resolution of the company and with the approval of the Registrar may change its name.

1901, c. 20, § 21.

**Registration of new name. 22.** Upon the change of name of any company under the provisions of either of the two next preceding sections the Registrar shall enter the new name on the register in place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case.

1901, c. 20, § 22.

**Effect of alteration of name. 23.** No such alteration of name shall affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company; and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

1901, c. 20, § 23.

**Power of Registrar to strike names of defunct companies off the register. 24.**

Where the Registrar has reasonable cause to believe that a company (whether registered before or after the passing of this Ordinance) is not carrying on business or in operation he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation. 2. If the Registrar does not within one month of sending the letter receive an answer thereto he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter and stating that no answer thereto had been received by him and that if an answer is not received to the second letter within one month from the date thereof a notice will be published in the *Gazette* with a view to striking the name of the company off the register. 3. If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation or does not within one month after sending the second letter receive any answer thereto the Registrar may publish in the *Gazette* and send to the company a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will unless cause is shown to the contrary be struck off the register and the company dissolved. 4. At the expiration of the time mentioned in the notice the Registrar may unless cause to the contrary is previously shown by such company strike the name of such company off the register and shall publish notice thereof in the *Gazette*; and on the publication in the *Gazette* of such last mentioned notice the company whose name is so struck off shall be dissolved: Provided that the liability if any of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved. 5. If any company or member or creditor thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section the company or member or creditor may apply to the Court; and the Court if satisfied that the company was at the time of the striking off carrying on business or in operation and that it is just to do so may order the name of the company to be restored to the register; and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had never been struck off. 6. A letter or notice authorized or required for the purpose of this section to be sent to a company may be sent by post addressed to the company at its registered office, or if no office has been registered addressed to the care of some director or officer of the company, or if there be no director or officer of the company whose name and address are known to the Registrar the letter or notice in identical form may be sent to each of the persons who subscribe the memorandum of association addressed to him at the address mentioned in the memorandum. 7. Where a company is being wound up and the Registrar has reasonable cause to believe that no liquidator is acting or that the affairs of the company are fully wound up and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the Registrar demanding the returns has been sent by post to the registered address of the company and to the liquidator at his last known place of business the provisions of this section shall apply in like manner as if the Registrar had not within one month after sending the second letter in subsection 2 of this section mentioned received any answer thereto.

1901, c. 20, § 24.



## *Part II. Distribution of Capital and Liability of Members and Officers of Companies.*

### *Distribution of capital.*

**Definition of member.** 25. The subscribers of the memorandum of association of any company under this Ordinance shall be deemed to have agreed to become members of the company whose memorandum they have subscribed; and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company under this Ordinance and whose name is entered on the register of members shall be deemed to be a member of the company.

1901, c. 20, § 25.

**Nature of interest, etc., in company.** 26. The shares or other interest of any member in a company under this Ordinance shall be personal estate capable of being transferred in manner provided by the regulations of the company and shall not be of the nature of real estate; and each share shall in the case of a company having a capital divided into shares be distinguished by its appropriate number.

1901, c. 20, § 26.

**Register of members. Penalty.** 27. Every company under this Ordinance shall cause to be kept in one or more books a register of its members; and there shall be entered therein the following particulars: a) The names and addresses and the occupations, if any, of the members of the company; with the addition in the case of a company having a capital divided into shares of a statement of the shares held by each member distinguishing each share by its number; and the amount paid or agreed to be considered as paid on the shares of each member; b) The date at which the name of any person was entered in the register as a member; c) The date at which any person ceased to be a member. 2. Any company acting in contravention of this section shall upon summary conviction be liable to a penalty not exceeding \$ 25 for every day during which its default in complying with the provisions of this section continues; and every director, manager, secretary, and officer of the company who shall knowingly and wilfully authorise or permit such contravention shall upon summary conviction be liable to the like penalty.

1901, c. 20, § 27.

**Transfer by personal representative.** 28. Any transfer of the share or other interest of a deceased member of a company under this Ordinance made by his personal representative shall notwithstanding such personal representative may not himself be a member be of the same validity as if he had been a member at the time of the execution of the instrument of transfer. 2. The personal representative of a deceased member shall represent the shares or stock of such deceased member at all meetings of the company and may vote as a shareholder in respect thereof.

1901, c. 20, § 28.

**Entry of transfer by transferrer.** 29. A company shall on the application of the transferrer of any shares or interest in the company enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

1901, c. 20, § 29.

**Transfer to escape liability.** 30. Any transfer of shares in a company under this Ordinance made for the purpose of avoiding or escaping the further liability of a shareholder as such for a nominal or no consideration or to a person in the menial or domestic service of the transferrer shall be deemed to be a fraudulent transfer and need not be recognized by the company or by the court on the winding-up of the company.

1901, c. 20, § 30.

**Annual list of shares.** 31. Every company having a capital divided into shares shall make once at least in every year a list in the form E in the second Schedule of all persons who on the fourteenth day succeeding the day on which the ordinary general meeting or if there is more than one ordinary meeting in each year the first of such ordinary general meetings is held are members of the company; and such list shall state the names and so far as may be possible the addresses and occupations of all the members therein mentioned and the number of shares held by each of them and shall contain a summary specifying the following particulars: 1. The amount of capital of the company and the number of shares into which it is divided; 2. The

number of shares taken from the commencement of the company up to the date of the summary; 3. The amount of calls made on each share; 4. The total amount of calls received; 5. The total amount of calls unpaid; 6. The total amount of shares forfeited; 7. The names, addresses, and occupations of the persons who have ceased to be members since the last list was made and the number of shares formerly held by each of them; 8. The total amount of debt due from the company in respect of all mortgages and charges; and 9. The names and addresses of the persons who are the directors of the company at the date of the summary. 2. The above list and summary shall be contained in a separate part of the register and shall be completed within seven days after such fourteenth day as is mentioned in this section and shall be signed by the manager or secretary of the company and a copy shall forthwith be forwarded to the Registrar. 3. Any company making default in complying with the provisions of this section with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar shall upon summary conviction be liable to a penalty not exceeding \$ 25 for every day during which such default continues; and every director, manager, secretary, and officer of the company who shall knowingly and wilfully authorize or permit such default shall upon summary conviction be liable to the like penalty.

1901, c. 20, § 31.

**Company to give notice of consolidation, etc., of shares. 32.** Every company under this Ordinance having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares or converted any portion of its capital into stock shall forthwith give notice to the Registrar of such consolidation, division, or conversion specifying the shares so consolidated, divided, or converted and in default shall be subject to the penalty in the last section mentioned.

1901, c. 20, § 32.

**Effect of conversion into stock. 33.** Where any company having a capital divided into shares has converted any portion of its capital into stock and given notice of such conversion to the Registrar all the provisions of this Ordinance which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of the members hereby required to be kept by the company and the list of members to be forwarded to the Registrar shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

1901, c. 20, § 33.

**No trust to be entered on register. 34.** No notice of any trust (expressed, implied, or constructive) shall be entered on the register or be receivable by the Registrar in the case of companies under this Ordinance.

1901, c. 20, § 34.

**Company not bound to see to trusts, etc., 35.** The company shall not be bound to see to the execution of any trust (whether expressed, implied, or constructive) in respect of any share; and the receipt of the shareholder in whose name the same stands on the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share whether or not notice of the trust has been given to the company; and the company shall not be bound to see to the application of the money paid upon such receipt.

1901, c. 20, § 35.

**Evidence of title to shares, etc. 36.** A certificate under the common seal of the company specifying any share or shares or stock held by any member of a company shall be prima facie evidence of the title of the member to the share or shares or stock therein specified.

1901, c. 20, § 36.

**Inspection of register. 37.** The register of members commencing from the date of the registration of the company shall be kept at the registered office of the company hereinafter mentioned. Except when closed as hereinafter mentioned, it shall during business hours subject to such reasonable restrictions as the company in general meeting may impose but so that no less than two hours in each day be appointed for inspection be open to the inspection of any member gratis and to the inspection of any other person on the payment of twenty-five cents or such less sum as the company may prescribe for each inspection and every such member or other person may require a copy of such register or of any part thereof or of such list or



summary of members as is hereinbefore mentioned on payment of twenty-five cents for every hundred words required to be copied. 2. If such inspection or copy is refused the company shall for each refusal upon summary conviction be liable to a penalty not exceeding \$10 and a further penalty not exceeding \$10 for every day during which such refusal continues; and every director, manager, secretary, and officer of the company who shall knowingly authorise or permit such refusal shall upon summary conviction be liable to the like penalty; and in addition to the above penalty any judge of the Supreme Court sitting in chambers may upon summary order compel an immediate inspection of the register.

1901, c. 20, § 37.

**Closing of register.** 38. Any company under this Ordinance may upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated close the register for members for any any time or times not exceeding in the whole thirty days in each year.

1901, c. 20, § 38.

**Notice to Registrar of increase of capital or members.** 39. Where a company has a capital divided into shares (whether shares may or may not have been converted into stock) notice of any increase in such capital beyond the registered capital and where a company has not a capital divided into shares notice of any increase in the number of members beyond the registered number shall be given to the Registrar in the case of an increase of capital within fifteen days from the date of the passing of the resolution by which such increase has been authorized and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place; and the Registrar shall forthwith record the amount of such increase of capital or members. 2. If such notice is not given within the period aforesaid the company in default shall upon summary conviction be liable to a penalty not exceeding \$25 for every day during which such neglect to give notice continues; and every director, manager, secretary, and officer of the company who shall knowingly and wilfully authorise or permit such default shall upon summary conviction be liable to the like penalty.

1901, c. 20, § 39.

**Remedy for improper entry or omission in the register.** 40. If the name of any person is without sufficient cause entered in or omitted from the register of members of any company under this Ordinance or if default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member of the company the person or members aggrieved or any member of the company or the company itself may by motion in the Supreme Court or by application to a Judge thereof sitting in chambers apply for an order that the register may be rectified; and the Court or Judge may either refuse such application with or without costs to be paid by the applicant or may if satisfied of the justice of the case make an order for the rectification of the register; and may direct the company to pay all costs of such motion or application and any damages the party aggrieved may have sustained. 2. The Court or Judge may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members or between any members or alleged members and the company; and generally the Court or Judge may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register: Provided that the Court or Judge may direct an issue to be tried in which any question of law may be raised and an appeal shall lie.

1901, c. 20, § 40.

**Notice to Registrar of rectification of register.** 41. Whenever any order has been made rectifying the register in the case of a company hereby required to send a list of its members to the Registrar the Court shall by its order direct that due notice of such rectification be given to the Registrar.

1901, c. 20, § 41.

**Register to be evidence.** 42. The register of members shall be prima facie evidence of any matters by this Ordinance directed or authorized to be inserted therein.

1901, c. 20, § 42.

#### *Liability of members.*

[43. Is repealed.]

**Shareholder's liability on unpaid portion.** 44. Except as hereinafter otherwise provided each shareholder until the whole amount of his shares, stock, or other

interest has been paid up shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon but shall not be liable to an action therefor by any creditor before an execution against the company has been returned unsatisfied in whole or in part; and the amount due on such execution but not beyond the amount so unpaid of his said shares, stock, or other interest shall be the amount so recoverable with costs against such shareholder. 2. Any shareholder may plead by way of defence in whole or in part any set off which he could set up against the company except a claim for unpaid dividends or a salary or allowance as a president or a director of the company. 3. The shareholders of the company shall not as such be held responsible for any act, default, or liability whatsoever of the company or for any engagement, claim, payment, loss, injury, transaction, matter, or thing whatsoever related to or connected with the company beyond the unpaid amount of their respective shares in the capital stock thereof.

1901, c. 20, § 44.

**Trustees, etc.** 45. No person holding shares, stock, or other interest in the company as executor, administrator, guardian, or trustee shall be personally subject to liability as a shareholder; but the estate and funds in the hands of such person shall be liable in like manner and to the same extent as the testator or intestate or the minor, ward, or other person interested in the trust fund would be if living and competent to act and holding such shares, stock, or other interest in his own name.

1901, c. 20, § 45.

**Non-personal liability of mortgages or pledges of shares.** 46. No person holding shares, stock, or other interest as collateral security shall be personally subject to liability as a shareholder; but the person pledging such shares, stock, or other interest as such collateral security shall be considered as holding the same and shall be liable as a shareholder in respect thereof.

1901, c. 20, § 46.

**Liability, etc., of shareholders in case of winding-up.** 47. In the event of a company formed under this Ordinance or under any other Ordinance of the Territories being wound up every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company and the costs, charges, and expenses of the winding-up and for payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves with the qualifications following that is to say: a) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up; b) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member; c) No past member shall be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance; d) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount if any unpaid on the shares in respect of which he is liable as a present or past member; e) In the case of a company limited by guarantee no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association; f) Nothing in this Ordinance contained shall invalidate any provision contained in any contract whereby the liability of individual members upon any such contract is restricted or whereby the funds of the company are alone made liable in respect of such contract; g) No sum due to any member of a company in his character of a member by way of dividends, profits, or otherwise shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories among themselves.

1901, c. 20, § 47.

#### *Liability of directors.*

**Company may have directors with unlimited liabilities.** 48. Where a company is formed as a limited company the liability of the directors or managers of such company or the managing director may if so provided by the memorandum of association or by resolution as hereinafter provided be unlimited.

1901, c. 20, § 48.



**Liability of directors past and present where liability is unlimited. 49.** The following are the contributions to be required in the event of the winding-up of a limited company from any director or manager whose liability is in pursuance of this Ordinance unlimited: a) Subject to the provisions hereinafter contained any such director or manager whether past or present shall in addition to his liability, if any, to contribute as an ordinary member be liable to contribute as if he were at the date of his commencement of the winding-up a member of an unlimited company; b) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount if any which he is liable to contribute as an ordinary member of the company; c) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount if any which he is liable to contribute as an ordinary member of the company; d) Subject to the provisions contained in the regulations of the company no contribution required from any director or manager shall exceed the amount if any which he is liable to contribute as an ordinary member unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company and the costs, charges, and expenses of the winding-up.

1901, c. 20, § 49.

**Director with unlimited liability may have set-off. 50.** In the event of the winding-up of any limited company the Court if it thinks fit may allow to any director or manager of such company whose liability is unlimited by way of set-off any moneys due to him from the company other than dividends or profits.

1901, c. 20, § 50.

**Notice to be given to director on his election that his liability will be unlimited. 51.** In any limited company in which in pursuance of this Ordinance the liability of a director or manager is unlimited the directors or managers of the company if any and the member who proposes any person for election or appointment to such office shall add to such proposal a statement that the liability of a person holding such office will be unlimited; and the promoters, directors, manager, and secretary if any of such company or one of them shall before such person accepts such office or acts therein give him notice in writing that his liability will be unlimited. 2. If any director, manager, or proposer make default in adding such statement or if any promoter, director, manager, or secretary make default in giving such notice he shall be liable to a penalty not exceeding \$500, and he shall also be liable for any damage which the person so elected or appointed may sustain from such default, but the liability of the person elected or appointed shall not be affected by such default.

1901, c. 20, § 51.

**Dividends not to be issued in insolvency of company. 52.** The directors of the company shall not declare or pay any dividend when the company is insolvent or any dividend the payment of which renders the company insolvent or diminishes the capital thereof; but if any director present when such dividend is declared forthwith or if any director then absent within twenty-four hours after he has become aware thereof and able so to do enters on the minutes of the board of directors his protest against the same and within eight days thereafter causes such protest to be published in at least one newspaper published at or as near as may be possible to the head office or chief place of business of the company such director may thereby and not otherwise exonerate himself from liability.

1901, c. 20, § 52.

**Prohibits loan to shareholders. 53.** No loan shall be made by the company to any shareholder; and if such loan is made all directors and other officers of the company making the same and in anywise assenting thereto shall be jointly and severally liable to the company for the amount thereof and also to the third parties to the extent of such loan with legal interest for all debts of the company contracted from the time of the making of the loan to that of the repayment thereof; but this section shall not apply to a building society.

1901, c. 20, § 53.

**Liability of directors for wages. 54.** The directors of a company shall be jointly and severally liable to the clerks, labourers, servants, and apprentices thereof for all debts not exceeding six months' wages due for services performed for the company whilst they are such directors respectively; but no director shall be liable to an action

therefor unless the company is sued therefor within one year after the debt becomes due, nor unless such director is sued therefor within one year from the time when he ceased to be such director, nor unless an execution against the company is returned unsatisfied in whole or in part; and the amount unsatisfied on such execution shall be the amount recoverable with costs from the directors.

1901, c. 20, § 54.

*Prospectus.*

**Publication of prospectus. 55.** Every prospectus issued by or on behalf of any company or intended company shall state the date on which it was issued; and that date shall be taken for all purposes as the date of publication. 2. A copy of every such prospectus shall be signed by every person who is named therein as a director or proposed director of the company or by his duly authorized agent; and shall be filed with the Registrar on or before the date of its publication. 3. The Registrar shall not register any prospectus unless it is so dated and signed; and no prospectus shall be issued until so filed for registration; and every prospectus shall state on the face of it that it has been so filed. 4. If default is made in complying with the requirements of this section every officer and agent of the company who is party to the issue of the prospectus shall upon summary conviction be liable to a fine not exceeding \$25 for every day during which the default continues.

1901, c. 20, § 55.

**Contents of prospectus. 56.** Every prospectus of a company must state: a) The contents of the memorandum of association with the names, occupations, and addresses of the signatories and the number of shares subscribed by them respectively; b) The number of shares if any fixed by the articles of association as the qualification of a director; c) The names, occupations, and addresses of the directors or proposed directors and the number of shares held or agreed to be taken by them respectively and whether any such share is held or agreed to be taken by any of them otherwise than in his own right as beneficial owner; d) The minimum subscription on which the directors may proceed to commence business and the minimum amount payable on application and allotment on each share; e) The number and amount of shares and debentures issued or agreed to be issued as fully or partly paid up otherwise than in cash; and in the latter case the extent to which they are so paid up; and in either case the consideration for which such shares or debentures have been issued or are proposed or intended to be issued; f) The names and addresses of the vendors of any property purchased or acquired by the company or proposed so to be purchased or acquired which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of publication of the prospectus, and where there is more than one vendor or the company is a sub-purchaser the amount payable in cash, shares or debentures to each vendor; g) The amount if any payable as purchase money in cash, shares, or debentures of any such property as aforesaid specifying the amount for good will if any such amount is separately payable; h) The amount if any payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company or the rate of any such commission; i) The amount or estimated amount of preliminary expenses; j) The amount intended to be paid to any promoter and the consideration for which it is to be paid; k) The amount intended to be reserved for working capital; l) The dates, parties, and short purport or effect of every material contract and every material fact known to any director or promoter of the company who is a party to the issue of the prospectus and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of business carried on or intended to be carried on by the company or to any contract entered into more than five years before the date of publication of the prospectus; m) The names and addresses of the auditors if any of the company; n) Full particulars of the nature and extent of the interest if any of every director in the promotion of or in the property proposed to be acquired by the company with a statement of all sums paid or agreed to be paid to him in cash or shares by any person either to qualify him as a director or otherwise for services rendered by him in connection with the formation of the company. 2. For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract (absolute or conditional) for the sale or purchase of any of the property to be acquired by the company in any case where: a) The purchase money



is not fully paid at the date of publication of the prospectus; or b) The purchase money is to be paid or satisfied (wholly or in part) out of the proceeds of the issue, offered by subscription by the prospectus; or c) The contract depends for its fulfilment on such issue. 3. This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe for further shares or debentures; but subject as aforesaid this section shall apply to any prospectus whether issued or with reference to the formation of a company or subsequently: Provided that: a) The requirements as to the memorandum of association; and the qualification, remuneration, and interest of directors; the names, descriptions, and addresses of directors or proposed directors; and the amount or estimated amount of preliminary expenses; shall not apply in the case of a prospectus published more than one year after the date at which the company is entitled to commence business; and b) In the case of a prospectus published more than one year after the date at which the company is entitled to commence business the obligation to disclose all material contracts shall be limited to a period of two years immediately preceding the publication of the prospectus. 4. Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus shall be void. 5. Where any such prospectus as is mentioned in this section is published as a newspaper advertisement it shall not be necessary to specify the contents of the memorandum of association or the signatories thereto and the number of shares subscribed to by them.

1901, c. 20, § 56.

**Liability for statement in prospectus.** 57. Where a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company every person who is a director of a company at the time of the issue of the prospectus or notice and every person who having authorized such naming of him is named in the prospectus or notice as a director of the company or as having agreed to become a director of the company either immediately or after an interval of time and every promoter of the company and every person who has authorized the issue of the prospectus or notice shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith unless it is proved: a) With respect to every such untrue statement not purporting to be made on the authority of an expert or of a public official document or statement that he had reasonable ground to believe and did up to the time of the allotment of the stock, debentures, or debenture stock (as the case may be) believe that the statement was true; b) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy or an extract from a report or valuation by an engineer, valuer, accountant, or other expert that it fairly represented the statement made by such engineer, valuer, accountant, or other expert or was a correct and fair copy of or extract from the report or valuation: Provided always that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert or was a correct and fair copy of an extract from the report or valuation such director, person named, promoter, or other person who authorized the issue of the prospectus or notice as aforesaid shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; c) With respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document that it was a correct and fair representation of such statement or copy of or extract from such document or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice and that the prospectus or notice was issued without his authority or consent or that the prospectus was issued without his knowledge or consent and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent or that after the issue of such prospectus or notice and before allotment thereunder he on becoming aware of any untrue statement therein withdrew his consent thereto and caused reasonable public notice of such withdrawal and of the reason therefor

to be given. 2. A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice or of the portion thereof containing such untrue statement but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company. 3. Where any company existing at the passing of this Ordinance which has issued shares or debentures shall be desirous of obtaining further capital by subscriptions for shares or debentures and for that purpose shall issue a prospectus or notice no director of such company shall be liable in respect of any statement therein unless he shall have authorized the issue of such prospectus or notice or have adopted or ratified the same. 4. In this section the word "expert" includes any person whose profession gives authority to a statement made by him.

1901, c. 20, § 57.

**What companies must file prospectuses.** 57a. Every company heretofore or hereafter incorporated under the authority of this Ordinance or under the authority of any special Ordinance or Act, the number of shareholders of which is increased to a number greater by ten than the number of applicants for incorporation or which has its debentures or other securities held by more than ten persons, and every company incorporated otherwise than as above set out which has more than ten shareholders or holders of debentures or other securities within Alberta, shall file a prospectus in the manner hereinbefore set out. 2. All purchases, subscriptions, or other acquisitions of shares, debentures, or other securities of any company required in the manner above provided to file a prospectus, shall be deemed as against the company or the signatories to the prospectus to be induced by such prospectus, and any term, proviso, or condition of such prospectus to the contrary shall be void. 3. No subscription for stock, debentures, or other securities induced or obtained by verbal representations shall be binding upon the subscriber unless prior to his so subscribing he shall have received a copy of the prospectus.

1909, (Part II.) c. 5, § 1.

**Indemnity where name of person has been improperly inserted as a director.** 58. Where any such prospectus or notice as aforesaid contains the name of a person as director of the company or as having agreed to become a director thereof and such person has not consented to become a director or has withdrawn his consent before the issue of such prospectus or notice and has not authorized or consented to the issue thereof the directors of the company except any without whose knowledge or consent the prospectus or notice was issued and any other person who authorized the issue of such prospectus or notice shall be liable to indemnify the person named as a director of the company or as having agreed to become a director thereof as aforesaid against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice or in defending himself against any action or legal proceedings brought against him in respect thereof.

1901, c. 20, § 58.

**Contributions from co-directors, etc.** 59. Every person who by reason of his being a director or named as a director or as having agreed to become a director or of his having authorized the issue of the prospectus or notice has become liable to make any payment under the provisions of this Ordinance shall be entitled to recover contribution as in cases of contract from any other person who if sued separately would have been liable to make the same payment.

1901, c. 20, § 59.

**Restrictions on appointment or advertisement of director.** 60. A person shall not be capable of being appointed director of a company by the articles of association and shall not be named as a director or proposed director of a company in any prospectus issued by or in behalf of the company, unless before the registration of the articles or the publication of the prospectus (as the case may be) he has by himself or by his agent authorized in writing: a) Signed and filed with the Registrar a consent in writing to act as such director; and b) Either signed the memorandum of association for a number of shares not less than his qualification if any or signed and filed with the Registrar a contract in writing to take from the company and pay for his qualification shares if any. 2. On the application for registration of the memorandum and articles of association of a company the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company and if this list contains the name of any person who has not so consented the applicant shall be liable



on summary conviction to a fine not exceeding \$200. 3. Provided that this section shall not apply to a company which does not issue any invitation to the public to subscribe for its shares or to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

1901, c. 20, § 60.

**Circulating misleading documents. 61.** Where any advertisement, letter head, postal card, account, or document issued, published, or circulated by any corporation, association, or company or any officer, agent, or employee of any such corporation, association, or company purports to state the subscribed capital of the company then the capital actually and in good faith subscribed and no more shall be so stated; and any such corporation, association, company, officer, agent, or employee who causes to be inserted an advertisement in any newspaper or who publishes, issues, or circulates or causes to be published, issued, or circulated any advertisement, letter head, post card, account, or document which states as the subscribed capital of such company any larger sum than the amount of such subscribed capital so actually and in good faith subscribed as aforesaid or which contains any untrue or false statement as to the incorporation, control, supervision, management, or financial standing of such corporation, association, or company and which statement is intended or calculated, or likely to mislead or deceive any person dealing or having any business or transaction with said corporation, association, or company or with any officer, agent, or employee of the association, corporation, or company, shall upon summary conviction be liable to a penalty not exceeding \$200 and costs and in default of payment the offender being an officer, agent, or employee as aforesaid shall be imprisoned for a term not exceeding three months and not less than one month; and on a second or any subsequent conviction he may be imprisoned for a term not exceeding twelve months and not less than three months.

1901, c. 20, § 61.

### *Part III. Powers, Management, and Administration.*

#### *Preference shares.*

**Preference shares. 62.** The directors of any company incorporated or reincorporated under this Ordinance may with the sanction of a special resolution of the company previously given in general meeting create and issue any part of the capital as preference shares giving the same such preference and priority as respects dividends and otherwise over ordinary shares as may be declared by the special resolution. 2. The special resolution may provide that the holders of such preference shares shall have the right to select a certain stated proportion of the board of directors or may give them such other control over the affairs of the company as may be considered expedient. 3. Holders of such preference shares shall be shareholders within the meaning of this Ordinance and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of this Ordinance: Provided, however, that in respect of dividends and otherwise they shall as against the original or ordinary shareholders be entitled to the preference given by any special resolution as aforesaid. 4. Nothing in this section shall affect or impair the rights of creditors of any company.

1901, c. 20, § 62.

[63—68. Relate to mining companies.]

#### *Adjustment of calls and dividends.*

**Adjustment of calls and dividends. 60.** Nothing contained in this Ordinance shall be deemed to prevent any company incorporated under this Ordinance if authorized by its regulations as originally framed or as altered by special resolution from doing any one or more of the following things, namely: 1. Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls; 2. Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made; 3. Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

1901, c. 20, § 69.

*Subdivision of shares.*

**Subdivision of shares. 70.** Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association if authorized so to do by its regulations as originally framed or as altered by special resolution as by subdivision of its existing shares or any of them to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association: Provided that in the subdivision of existing shares the proportion between the amount that is paid and the amount if any which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

1901, c. 20, § 70.

**Statement of shares to accord with special resolution. 71.** The statement of the number and amount of shares into which the capital of the company is divided contained in every copy of the memorandum of association or any other official document issued after the passing of any special resolution shall be in accordance with such special resolution: and any company which makes default in complying with the provisions of this section shall upon summary conviction be liable to a penalty not exceeding \$5 for each copy in respect of which such default is made; and every director, manager, secretary, and officer of the company who knowingly or wilfully authorizes or permits any such default shall upon summary conviction be liable to the like penalty.

1901, c. 20, § 71.

*Share warrants.*

**Warrant of limited shares fully paid up or of stock may be issued to bearer. 72.** In the case of a company limited by shares the company if authorized to do so by its regulations as originally framed or as altered by special resolution and subject to the provisions of such regulations may with respect to any share which is fully paid up or with respect to stock issue under its common seal a warrant stating that the bearer of the warrant is entitled to the share or shares of stock therein specified; and may provide by coupons or otherwise for the payment of the future dividends on the share or shares or stock included in such warrant hereinafter referred to as a share warrant.

1901, c. 20, § 72.

**Effects of and mode of transfer of share warrant. 73.** A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it; and such shares or stock may be transferred by the delivery of the share warrant.

1901, c. 20, § 73.

**Re-registration of bearer of share warrant. 74.** The bearer of a share warrant shall subject to the regulations of the company be entitled on surrendering such warrant for cancellation to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled.

1901, c. 20, § 74.

**Rights of bearer of share warrant as member of company. 75.** The bearer of a share warrant may if the regulations of the company so provide be deemed to be a member of the company within the meaning of this Ordinance either to the full extent or for such purposes as may be prescribed by the regulations: Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

1901, c. 20, § 75.

**Entries in register in case of share warrant. 76.** On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member; and shall enter in the register the following particulars: a) The fact of the issue of the warrant; b) A statement of the shares or stock included in the warrant distinguishing each share by its number; c) The date of the issue of the warrant; and until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the twenty-seventh section of this Ordinance to be entered in the register of members of a company; and on the



surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

1901, c. 20, § 76.

**Particulars of share warrant in annual summary. 77.** After the issue by the company of a share warrant the annual summary required by the thirty-first section of this Ordinance shall contain the following particulars: a) The total amount of shares or stock for which share warrants are outstanding at the date of the summary; b) The total amount of share warrants which have been issued and surrendered respectively since the last summary was made; and c) The number of shares or amount of stock comprised in each warrant.

1901, c. 20, § 77.

*Reduction of capital and shares.*

**Power to reduce capital. 78.** Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association if authorized to do so by its regulations as originally framed or as altered by special resolution as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the Registrar as is hereinafter mentioned. 2. The power to reduce capital conferred by this section shall include paid up capital; and a power to cancel any lost capital or any capital unrepresented by available assets or to pay off any capital which may be in excess of the wants of the company; and paid up capital may be reduced either with or without extinguishing or reducing the liability if any remaining on the shares of the company; and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved.

1901, c. 20, § 78.

**After such reduction "and reduced" added to name. 79.** Every company shall after the date of the passing of any special resolution for reducing its capital add to its name until such date as the Court may fix the words "and reduced" as the last words in its name; and those words shall until such date be deemed to be part of the name of the company.

1901, c. 20, § 79.

**Company to apply for order confirming reduction. 80.** A company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction; and on the hearing of the petition the Court if satisfied that with respect to every creditor of the company who under the provisions of this Ordinance is entitled to object to the reduction, either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured as hereinafter provided may make an order confirming the reduction on such terms and subject to such conditions as may seem fit. 2. Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid up capital: a) The creditors of the company shall not unless the Court otherwise direct be entitled to object or required to consent to the reduction; and b) It shall not be necessary before the presentation of the petition for confirming the reduction to add and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced." 3. In any case that the Courts thinks fit so to do it may require the company to publish in such manner as the Court may direct the reasons for the reduction of its capital or such other information in regard to the reduction of its capital as the Court may think expedient with a view to giving proper information to the public in relation to the reduction of its capital by a company and if the Court thinks fit the causes which led to such reduction.

1901, c. 20, § 80.

**Right of creditors to object to reduction. 81.** Where a company proposes to reduce its capital every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which if that date were the commencement of the winding-up of the company would be admissible in proof against the company shall be entitled to object to the proposed reduction and to be entered in the list of creditors who are so entitled to object. 2. The Court shall settle a list of such creditors; and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of such creditors and the nature and amount of their debts or claims; and may publish notices fixing a certain day or days within which creditors

of the company who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction.

1901, c. 20, § 81.

**Court may dispense with consent of creditors on security given.** 82. Where a creditor whose name is entered on the list of creditors and whose debt or claim is not discharged or determined does not consent to the proposed reduction the Court may if it thinks fit dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the Court may direct a sum of such amount as is hereinafter mentioned that is to say: 1. If the full amount of the debt or claim of the creditor is admitted by the company or though not admitted is such as the company is willing to set apart and appropriate then the full amount of the debt or claim shall be set apart and appropriated; 2. If the full amount of the debt or claim is not admitted by the company and is not such as the company is willing to set apart and appropriate or if the amount is contingent or not ascertained then the Court may if it thinks fit inquire into and adjudicate upon the validity of such debt or claim and the amount for which the company may be liable in respect thereof in the same manner as if the company were being wound up by the Court; and the amount fixed by the Court on such enquiry and adjudication shall be set apart and appropriated.

1901, c. 20, § 82.

**Order and minute to be registered.** 83. The Registrar upon the production to him of an order of the Court confirming the reduction of the capital of a company and the delivery to him of a copy of the order and of a minute approved by the Court showing with respect to the capital of the company as altered by the order the amount of such capital the number of shares into which it is to be divided the amount of each share and the amount if any at the date of the registration of the minute proposed to be deemed to have been paid up on each share shall register the order and minute; and on the registration the special resolution confirmed by the order so registered shall take effect. 2. Notice of such registration shall be published in such manner as the Court may direct. 3. The Registrar shall certify under his hand the registration of the order and minute; and his certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to the reduction of capital have been complied with and that the capital of the company is as stated in the minute.

1901, c. 20, § 83.

**Minute to form part of memorandum of association.** 84. The minute when registered shall be deemed to be substituted for the corresponding part in the memorandum of association of the company; and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association; and subject as in this Ordinance mentioned no member of the company whether past or present shall be liable in respect of any share to any call or contribution exceeding in amount the difference if any between the amount which has been paid on such share and the amount of the share as fixed by the minute.

1901, c. 20, § 84.

**Saving right of creditors ignorant of proceedings.** 85. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Ordinance is in consequence of his ignorance of the proceedings taken with a view to such reduction or of their nature and effect with respect to his claim not entered on the list of creditors and after such reduction the company is unable within the space of three weeks after demand made to pay to the creditor the amount of such debt or claim every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute to the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and on the company being wound up the Court on the application of such creditor and on proof that he was ignorant of the proceedings taken with a view to the reduction or of their nature and effect with respect to his claim may if it thinks fit settle a list of such contributories accordingly and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

1901, c. 20, § 85.



**Registered minute to be embodied in memorandum of association. 86.** A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section it shall upon summary conviction be liable to a penalty not exceeding \$5 for each copy in respect of which such default is made; and every director, manager, secretary, and officer of the company who shall knowingly and wilfully authorize or permit such default shall upon summary conviction be liable to the like penalty.

1901, c. 20, § 86.

**Concealing name of creditor entitled to object. 87.** If any director, manager, or officer of a company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid every such director, manager, or officer shall for every such offence upon summary conviction be liable to a penalty not exceeding \$500.

1901, c. 20, § 87.

**Reduction by cancelling of unused shares. 88.** Any company limited by shares may so far modify the conditions contained in its memorandum of association if authorized so to do by its regulations as originally framed or as altered by special resolution as to reduce its capital by cancelling any shares which at the date of the passing of such resolution have not been taken or agreed to be taken by any person; and the provisions of the ten next preceding sections of this Ordinance shall not apply to any reduction of capital made in pursuance of this section.

1901, c. 20, § 88.

*Alteration of objects mentioned in memorandum of association.*

**Alteration of memorandum of association or constitution. Grounds of confirmation. 89.** Subject to the provisions of this Ordinance any company registered under this Ordinance may by special resolution alter the provisions of its memorandum of association so far as may be required for any of the purposes hereinafter specified; but in no case shall any such alteration take effect until confirmed on petition by the Court. 2. Before confirming any such alteration the Court must be satisfied: a) That sufficient notice has been given to every holder of debentures or debenture stock of the company and any person or class of persons whose interests will in the opinion of the Court be affected by the alteration; and b) That with respect to every creditor who in the opinion of the Court is entitled to object and who signifies his objection in manner directed by the Court either his consent to the alteration has been obtained or his debt or claim has been discharged or determined or has been secured to the satisfaction of the Court: Provided that the Court may in the case of any person or class of persons for special purpose dispenses with the notice required by this section. 3. An order confirming any such alteration may be on such terms and subject to such conditions as to the Court seems fit; and the Court may make such orders as to costs as it deems proper. 4. The Court shall in exercising its discretion under the provisions of this section have regard to the rights and interests of the members of the company or of any class of those members as well as to the rights and interests of the creditors; and may if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interest of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always that it shall not be lawful to expend any part of the capital of the company in any such purchase. 5. The Court may confirm either wholly or in part any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company: a) To carry on its business more economically or more efficiently; or b) To attain its main purpose by new or improved means; or c) To enlarge or change the local area of its operations; or d) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or e) To restrict or abandon any of the objects specified in the memorandum of association.

1901, c. 20, § 89.

**Registration of altered memorandum of association. Penalty. 90.** Where a company has altered the provisions of its memorandum of association with respect to the objects of the company and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration together with a copy of the memorandum of association so altered shall be delivered by the company to the Registrar within fifteen days from the date of the order; and the Registrar shall register the same; and shall certify under his hand the registration thereof; and his certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to such alteration and confirmation thereof have been complied with; and thenceforth but subject to the provisions of this Ordinance the memorandum so altered shall be the memorandum of association of the company. 2. If the company makes default in delivering to the Registrar any document required by this section to be delivered to him the company shall upon summary conviction be liable to a penalty not exceeding \$50 for every day during which it is in default; and every director, manager, secretary, and officer of the company who shall knowingly and wilfully authorize or permit such default shall upon summary conviction be liable to the like penalty.

1901, c. 20, § 90.

#### *Increase of capital.*

**Power of certain companies to alter memorandum of association. 91.** Any company limited by shares may so far modify the conditions contained in its memorandum of association if authorized to do so by its regulations as originally framed or altered by special resolution in manner hereinafter mentioned as to increase its capital by the issue of new shares of such amount as it thinks expedient or to consolidate and divide its capital into shares of larger amount than its existing shares or to convert its existing shares into stock; but save as aforesaid and save as to the location of the registered office of the company and as herein provided no alteration shall be made by the company in the conditions contained in its memorandum of association.

1901, c. 20, § 91.

#### *Change of name.*

**Proceedings for change of name. 92.** When a company is desirous of changing its name the Registrar upon being satisfied that the company is in a solvent condition, that the change is not otherwise objectionable, that the change has been sanctioned by a special resolution of the company and that the notice hereinafter provided has been duly given, may change the name of the company to some other name. 2. The company shall give at least one month's previous notice in the *Gazette* and in some newspaper published or circulating in the locality in which the operations of the company are carried on of the intention to apply for the change of name and shall state the name proposed to be adopted. 3. Such change of name shall be conclusively established by the insertion in the *Gazette* of a notice thereof by the Registrar.

1901, c. 20, § 92.

**Effect of such change of name. 93.** No contract or engagement entered into by or with the company and no liability incurred by it shall be affected by the change of name; and all suits commenced by or against the company prior to the change of name may be proceeded with against or by the company under its former name.

1901, c. 20, § 93.

**Limited company may by special resolution make liability of directors unlimited. 94.** Any limited company may by a special resolution if authorized so to do by its regulations as originally framed or as altered by special resolution from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers or of the managing director; and such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association; and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution; any default in this respect shall be deemed to be a default in complying with the provisions of the one hundred and twenty-fourth section of this Ordinance and shall be punished accordingly.

1901, c. 20, § 94.

#### *Contracts.*

**Contracts how made. 95.** Contracts on behalf of any company incorporated under this Ordinance may be made as follows, that is to say: a) Any contract which if made between private persons would be by law required to be in writing and if made



according to the law of the Territories or of the Dominion of Canada to be under seal may be made on behalf of the company in writing under the common seal of the company; and such contract may be in the same manner varied or discharged; b) Any contract which if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company; and such contract may in the same manner be varied or discharged; c) Any contract which if made between private persons would by law be valid although made by parole only and not reduced into writing may be made by parole on behalf of the company by any person acting under the express or implied authority of the company; and such contract may in the same manner be varied or discharged; and all contracts made according to the provisions herein contained shall be effectual in law; and shall be binding upon the company and their successors and all other parties thereto, their heirs, executors, or administrators as the case may be.

1901, c. 20, § 95. In the absence of a new agreement made by a company after its incorporation a contract made before its incorporation by a person purporting to contract for the company is not binding on the company, and this even though the parties afterwards carry out some of the terms of the contract in the belief that it is binding on the company. — *Coit v. Dowling*, (1901), 4 Terr. L. R. 464. The ordinary contracts of a company need not be under seal. — *In re Red Deer Milling & Elevator Co.*, Ex parte The Liquidators, (1907), 1 Alb. 237.

**Promissory notes and bills of exchange.** 96. A promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any company under this Ordinance if made, accepted, or indorsed in the name of the company by any person acting under the authority of the company or if made, accepted, or indorsed by or on behalf or on account of the company by any person acting under the authority of the company.

1901, c. 20, § 96.

**Contracts generally when made by company, etc.** 97. Subject to the provisions of section 95 every contract, agreement, engagement, or bargain made and every bill of exchange drawn, accepted, or indorsed and every promissory note and cheque made, drawn, or indorsed on behalf of the company by any agent, officer, or servant of the company in general accordance with his powers as such under the regulations of the company shall be binding upon the company; and in no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note, or cheque or to prove that the same was made, drawn, accepted, or indorsed as the case may be in pursuance of any regulations or special resolution or order; nor shall the party so acting as agent, officer, or servant of the company be thereby subjected individually to any liability whatsoever to any third party therefor.

1901, c. 20, § 97.

#### *Borrowing powers.*

**Power to borrow money and to secure repayment.** 98. All companies under this Ordinance shall have power subject to the conditions of and in addition to all other powers conferred by this Ordinance to borrow money for the purpose of carrying out the objects of their respective incorporations; and to hypothecate, pledge, or mortgage their real and personal property; to issue debentures secured by mortgages or otherwise, to sign bills, notes, contracts, and other evidences of or securities for money borrowed or to be borrowed by them for the purposes aforesaid; and to pledge debentures as security for temporary loans. 2. These powers shall not be exercised except with the sanction of a resolution of the company previously given in general meeting.

1901, c. 20, § 98; 1907, c. 5, § 13.

**Power to re-issue redeemed debentures in certain cases.** 98a. Where either before or after the passing of this section a company has redeemed any debentures previously issued, the company, unless the articles of association of the company or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do, and not being an obligation enforceable only by the persons to whom the redeemed debentures were issued or his assigns, shall have power and shall be deemed always to have had power to keep the debentures alive for the purpose of re-issue, and where a company has purported to exercise such a power, the company shall have power, and shall be deemed always to have had power, to re-issue the de-

bentures, either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue, the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued. 2. Where with the object of keeping debentures alive for the purpose of re-issue, they have either before or after the passing of this section been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purpose of this section. 3. Where a company has either before or after the passing of this section deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited. 4. Nothing in this section shall prejudice: a) The operation of any judgment or order of a Court of competent jurisdiction pronounced or made before the coming into force of this section, as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this section had not been passed; or b) Any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished reserved to a company by its debentures or the securities for the same.

1908, c. 20, § 3.

*Provision for protection of creditors.*

**Registered office of company. 99.** Every company under this Ordinance shall have a registered office within the Territories to which all communications may be addressed. 2. If any company under this Ordinance carries on business without having such an office it shall upon summary conviction be liable to a penalty not exceeding \$25 for every day during which business is so carried on.

1901, c. 20, § 99.

**Notice of situation of. 100.** Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him; and until such notice is given the company shall not be deemed to have complied with the provisions of this Ordinance with respect to having a registered office.

1901, c. 20, § 100.

**Publication of name by a limited company. 101.** Every limited company under this Ordinance whether limited by shares or by guarantee shall paint or affix and shall keep painted or affixed its name on the outside of every office or place in which the business of the company is carried on in a conspicuous position in letters easily legible; and shall have its name engraven in legible characters on its seal; and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company; and in all bills of parcels, invoices, receipts, and letters of credit of the company.

1901, c. 20, § 101.

**Penalties for nonpublication of name, etc. 102.** If any limited company under this Ordinance does not paint or affix and keep painted or affixed its name in manner directed by this Ordinance it shall upon summary conviction be liable to a penalty not exceeding \$25 for not so painting or affixing its name and for every day during which such name is not so kept painted or affixed; and every director and manager of the company who shall knowingly and wilfully authorize and permit such default shall upon summary conviction be liable to the like penalty; and if any director, manager, or officer of such company or any person on its behalf uses or authorizes the use of any seal purporting to be the seal of the company whereon its name is not so engraven as aforesaid or issues or authorizes the issue of any notice, advertisement, or other official publication of such company or signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, indorsement, cheque, or order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the company whereby its name is not mentioned in manner aforesaid he shall upon summary conviction be liable to a penalty of \$250 and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof unless the same is duly paid by the company.

1901, c. 20, § 102.



**Register of mortgages. 103.** Every company under this Ordinance shall keep a register of all mortgages and charges specifically affecting property of the company; and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge; and if any property of the company is mortgaged without such entry as aforesaid being made every director, manager, or officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall upon summary conviction be liable to a penalty not exceeding \$250. 2. The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused any officer of the company refusing the same and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal shall upon summary conviction be liable to a penalty not exceeding \$25, and a further penalty of \$10 for every day during which such refusal continues; and in addition to the above penalty any judge of the Supreme Court sitting in chambers may by summary order compel an immediate inspection of the register.

1901, c. 20, § 103.

**Register of directors, etc. 104.** Every company under this Ordinance shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers; and shall send to the Registrar a copy of such register; and shall from time to time notify the Registrar of any change that takes place in such directors or managers.

1901, c. 20, § 104.

**Penalty on company not keeping register. 105.** If any company under this Ordinance makes default in keeping a register of its directors or managers or in sending a copy of such register to the Registrar in compliance with the foregoing rules or in notifying to the Registrar any change that takes place in such directors or managers such delinquent company shall upon summary conviction be liable to a penalty not exceeding \$25 for every day during which such default continues; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall upon summary conviction be liable to the like penalty.

1901, c. 20, § 105.

**Prohibits carrying on business with less than three members. 106.** If any company under this Ordinance carries on business when the number of its members is less than three for a period of six months after the number has been so reduced every person who is a member of such company during the time that it so carries on business after such period of six months and is cognizant of the fact that it is so carrying on business with fewer than three members shall be severally liable for the payment of the whole of the debts of the company contracted during such time and may be sued for the same without the joinder in the action of suit of any other member.

1901, c. 20, § 106.

**Restrictions on commencement of business. 107.** A company shall not commence any business or exercise any borrowing powers unless: a) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and b) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and c) There has been filed with the Registrar a statutory declaration by the secretary or one of the directors in the prescribed form that the aforesaid conditions have been complied with. 2. The Registrar shall on the filing of this statutory declaration certify that the company is entitled to commence business; and that certificate shall be conclusive evidence that the company is so entitled. 3. Any contract made by a company before the date at which it is entitled to commence business shall be provisional only; and shall not be binding on the company until that date; and on that date it shall become binding. 4. Nothing in this section shall prevent the simultaneous offer for subscription of any shares and debentures or the receipt of any application. 5. If any company commences business or exercises borrowing powers in contravention of this section every person who is responsible for the contravention shall without prejudice to any other liability be liable to a fine not exceeding \$200

for every day during which the contravention continues. 6. This section shall not apply to any company where there is no invitation to the public to subscribe for its shares.

1901, c. 20, § 107.

**Restrictions as to allotment. 108.** No allotment shall be made of any share capital of a company offered to the public for subscription unless the following conditions have been complied with namely: a) The amount if any fixed by the memorandum or articles of association and named in the prospectus as a minimum subscription upon which the directors may proceed to allotment; or b) If no amount is so fixed and named, then the whole amount of the share capital so offered for subscription has been subscribed and the sum payable on application for the amount so fixed and named or for the whole amount offered for subscription has been paid to and received by the company. 2. The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Ordinance referred to as the minimum subscription. 3. The amount payable on application on each share shall not be less than five per centum of the nominal amount of the share. 4. If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus all money received from applicants for shares shall be forthwith repaid to the applicants without interest; and if any such money is not repaid within forty-eight days after the issue of the prospectus the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eight days: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part. 5. Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section shall be void. 6. This section except subsection (3) thereof shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

1901, c. 20, § 108.

**Effect of irregular allotment. 109.** An allotment made by a company to an applicant in contravention of the foregoing provisions of this Ordinance shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later; and shall be voidable notwithstanding that the company is in course of being wound up. 2. If any director of a company knowingly contravenes or permits or authorizes the contravention of any of the foregoing provisions of this Ordinance with respect to allotments he shall be liable to compensate the company and the allottee respectively for any loss, damage, or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover such loss, damage, or costs shall not be commenced after the expiration of two years from the date of the allotment.

1901, c. 20, § 109.

**Returns as to allotments. Proviso. 110.** Whenever a company limited by shares makes any allotment of its shares the company shall within one month thereafter file with the Registrar: a) A return of the allotments stating the number and nominal amount of the shares comprised in the allotment; the names, addresses, and descriptions of the allottees; and the amounts if any paid or due and payable on each share; and b) In the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing stating the title of the allottee to such allotment together with any contract of sale or for services, or other consideration in respect of which such allotment was made and in default of such contract being filed such shares shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash; and a return stating the number and nominal amount of shares so allotted and the extent to which they are to be treated as paid up and the consideration for which they have been allotted: Provided that whenever after the coming into force of this amendment any shares in the capital of any company credited as fully or partly paid up shall have been or may be issued for a consideration other than cash and no such contract or no sufficient contract is so filed with the Registrar and whenever before the coming into force of the amendment to this Ordinance repealing section 43 thereof no such contract or no sufficient contract was or has been filed with the Registrar at or before the issue of any such shares the company or any person interested in such shares or any of them may apply to the Court for relief, and the Court if satisfied that the omission to file the contract or a



sufficient contract was accidental or due to inadvertence or that for any reason it is just and equitable to grant relief, may make an order for the filing with the Registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period it shall in relation to such shares operate as if it had been duly filed with the Registrar aforesaid and any such application may be made in the manner in which an application to rectify the register of members may be made under section 40 of this Ordinance, and either before or after an order has been made or an effective resolution has been passed for the winding-up of such company, and either before or after the commencement of any proceedings for enforcing the liability of such shares consequent on the omission aforesaid and any such application shall, if not made by the company, be served on the company, and the Court may make such order upon such application as may seem meet, and as to costs, and may direct that an office copy of the order be filed with the Registrar, and may, if it appear that the filing of the requisite contract would cause delay or inconvenience, or is impracticable, direct the filing in lieu thereof of a memorandum in writing in a form approved by the Court, specifying the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period, it shall in relation to such shares operate as if it were a sufficient contract in writing as by law is or was required. 2. If default is made in complying with the requirements of this section every director, manager, secretary, or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding \$ 250 for every day during which default continues.

1901, c. 20, § 110; 1907, c. 5, § 13. The provision that "the Court is satisfied, that the omission to file the contract or a sufficient contract was accidental or due to inadvertence, or that for any other reason it is just and equitable to grant relief," has no application where there was no contract at all in existence at the time of the issue of the shares. Before granting relief the applicant must satisfy the Court that creditors will not be injuriously affected by the order. — *In re Red Deer Mill & Elevator Co., MacDonald's Case*, (1908), 1 Alb. 538.

**Commissions, discounts, etc. 111.** Upon any offer of shares to the public for subscription it shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares in the company or procuring or agreeing to procure subscriptions whether absolute or conditional for any shares in the company if the payment of the commission and the amount or rate per centum of the commission paid or agreed to be paid are respectively authorized by the articles of association and disclosed in the prospectus and the commission paid or agreed to be paid does not exceed the amount or rate so authorized. 2. Save as aforesaid no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance to any person on consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares in the company or procuring or agreeing to procure subscriptions whether absolute or conditional for any shares in the company whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company or the money to be paid out of the nominal purchase money or contract price or otherwise. 3. Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

1901, c. 20, § 111.

#### *Notices, etc.*

**Corporate name and proof of memorandum, etc., in actions and proceedings. 112.** In any action or proceedings it shall not be necessary to set forth the mode of incorporation of the company otherwise than by mention of it under its corporate name as incorporated or reincorporated under this Ordinance; and the memorandum and articles of association of the company or any exemplification or copy thereof certified under the hand and seal of the Registrar or any copy of the *Gazette* containing such memorandum and articles of association shall be conclusive proof of every matter and thing therein set forth.

1901, c. 20, § 112.

**Certified copy of resolution prima facie evidence. 113.** A copy of any resolution of a company under its seal and purporting to be signed by any officer of the company shall be prima facie evidence of such resolution.

1901, c. 20, § 113.

**Service of company. 114.** Any summons, notice, order, or other process or document requiring to be served upon the company may in addition to any other method of service from time to time provided by any Ordinance or rule of Court in that behalf be served by leaving the same at the registered office of the company with any adult person in the employ of the company or by leaving it with the president or secretary of the company or by leaving the same at the domicile of either of them or with any adult person of his family or in his employ or by sending it in a prepaid letter addressed to the company at its registered office or if the company has no registered office or has no known president or secretary the Court may order such publication as it deems requisite to be made in the premises and such publication shall be held to be due service upon the company.

1901, c. 20, § 114.

**Rules as to notices by letter. 115.** Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period if any prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed and that it was put as a prepaid letter into the post office.

1901, c. 20, § 115.

**Authentication of notices by company. 116.** Any summons, notice, order, or proceeding requiring authentication by the company may be signed by any director, secretary, or other authorized officer of the company and need not be under the common seal of the company; and the same may be in writing or in print or partly in writing and partly in print.

1901, c. 20, § 116.

*Statutory meeting.*

**First statutory meeting of company. 117.** Every company limited by shares shall within a period of six months from the date at which the company is entitled to commence business hold a general meeting of the members of the company which shall be called the statutory meeting. 2. The directors shall at least seven days before the day on which the meeting is held forward to every member of the company a report certified by not less than two directors of the company or where there are less than two directors by the sole director and manager stating: a) The total number of shares allotted distinguishing shares allotted as fully or partly paid up otherwise than in cash; and stating in the case of shares partly paid up the extent to which they are so paid up; and in either case the consideration for which they have been allotted; b) The total amount of cash received by the company in respect of such shares distinguished as aforesaid; c) An abstract of the receipts and payments of the company on capital account to the date of the report; and an account or estimate of the preliminary expenses of the company; d) The names, addresses, and descriptions of the directors, auditors if any, manager if any, and secretary of the company; and e) The particulars of any contract the modification of which is to be submitted to the meeting for its approval; together with the particulars of the modification or proposed modification. 3. The report shall so far as it relates to the shares allotted by the company and to the cash received in respect to such shares and to the receipts and payment of the company on capital account be certified as correct by the auditors if any of the company. 4. The directors shall cause a copy of the report certified as by this section required to be filed with the Registrar forthwith after the sending thereof to the members of the company. 5. The directors shall cause a list showing the names, descriptions, and addresses of the members of the company and the number of shares held by them respectively to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting. 6. The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the report whether previous notice has been given or not; but no resolution of which notice has not been given in accordance with the articles of association may be passed. 7. The meeting may adjourn from time to time; and at any such adjourned meeting any resolution of which notice has been given in accordance with the articles of association either before or subsequently to the former meeting may be passed; and the adjourned meeting shall have the same powers as an original meeting. 8. If default is made in filing such report as aforesaid or in holding the statutory meeting then at the expiration of fourteen days after the last day on which the meeting ought to have been held any shareholder may petition the Court



for the winding-up of the company; and upon the hearing of the petition the Court may either direct that the company be wound up or give directions for the report being filed or a meeting being held or make such other order as may be just; and may order that the costs of the petition be paid by any persons who in the opinion of the Court are responsible for the default.

1901, c. 20, § 117.

**General meetings.** 118. A general meeting of every company under this Ordinance shall be held once at least in every year. 2. Notwithstanding anything in the regulations of a company the directors shall on the requisition of the holders of not less than one-tenth of the issued capital of the company upon which all calls and other sums then due have been paid forthwith proceed to convene an extraordinary meeting of the company. 3. The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the office of the company; and may consist of several documents in like form each signed by one or more requisitionists. 4. If the directors of the company do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited the requisitionists or a majority of them in value may themselves convene the meeting; but any meeting so convened shall not be held after three months from the date of such deposit. 5. If at any such meeting a resolution requiring confirmation at another meeting is passed the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and if thought fit of confirming it as a special resolution; and if the directors do not convene the meeting within seven days from the date of the passing of the first resolution the requisitionists or a majority of them in value may themselves convene the meeting. 6. Any meeting convened under this section by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors.

1901, c. 20, § 118. Where the requisite number of shareholders have joined in a requisition pursuant to this section, among them being all the directors, all of whom subsequently signed an instruction to the secretary, himself a director, to call a meeting, it was held that the want of a regular meeting of the directors was a mere irregularity, and did not invalidate the subsequent meeting of shareholders at which the winding-up resolution was passed. — *Red Deer Mill & Elevator Co. v. Hall*, (1908), 1 Alb. 530.

**Alteration of regulations by special resolution.** 119. Subject to the provisions of this Ordinance and to the conditions contained in the memorandum of association any company formed under this Ordinance may in general meeting from time to time by passing a special resolution in manner hereinafter mentioned alter all or any of the regulations of the company contained in the articles of association or in the table marked A in the first Schedule where such table is applicable to the company or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be the regulations of the company of the same validity as if they had been originally contained in the articles of association; and shall be subject in like manner to be altered or modified by any subsequent special resolution.

1901, c. 20, § 119.

**Special resolutions.** 120. A resolution passed by a company under this Ordinance shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the regulations of the company to vote as may be present in person or by proxy in cases where by the regulations of the company proxies are allowed at any general meeting of which notice specifying the intention to propose such resolution has been duly given; and such resolution has been confirmed by a majority of such members for the time being entitled according to regulations of the company to vote as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed. 2. At any meeting mentioned in this section unless a poll is demanded by at least five members a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the same. 3. Notice of any meeting shall for the purposes of this section be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the company. 4. In computing the

majority under this section when a poll is demanded reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

1901, c. 20, § 120.

**Provisions where no regulations as to voting. 121.** In default of any regulations as to voting every member shall have one vote; and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the first Schedule hereto; and in default of any regulations as to the person to summon meetings five members shall be competent to summon the same; and in default of any regulations as to who is to be chairman of such meeting it shall be competent for any person elected by the members present to preside.

1901, c. 20, § 121.

**Registration of special resolution. 122.** A copy of any special resolution that is passed by any company under this Ordinance shall be forwarded to the Registrar and be recorded by him. 2. If such copy is not forwarded within fifteen days from the date of the confirmation of the resolution the company shall upon summary conviction be liable to a penalty not exceeding \$ 10 for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director, manager, and officer of the company who shall knowingly and wilfully authorize or permit such default shall upon summary conviction be liable to the like penalty.

1901, c. 20, § 122.

**Special resolution to be embodied in articles of association, or supplied to members. 123.** Where articles of association have been registered a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution, and where no articles of association have been registered a copy of any special resolution shall be forwarded to any member requesting the same on payment of twenty-five cents or such less sum as the company may direct. 2. If any company makes default in complying with the provisions of this section it shall upon summary conviction be liable to a penalty not exceeding \$ 5 for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall upon summary conviction be liable to the like penalty.

1901, c. 20, § 123.

**Power of attorney by company. 124.** Any company under this Ordinance may by instrument in writing under its common seal empower any person either generally or in respect of any specified matters as its attorney to execute deeds on its behalf in any place situate within or without the limits of the Territories; and every deed signed by such attorney on behalf of the company and under his seal shall be binding on the company and have the same effect as if it were under the common seal of the company.

1901, c. 20, § 124.

#### *Inspectors.*

**Inspectors appointed by Lieutenant-Governor in Council on application. 125.** The Lieutenant-Governor in Council may appoint one or more competent inspectors to examine into the affairs of any company under this Ordinance and to report thereon in such manner as the Lieutenant-Governor in Council may direct upon the applications following, that is to say: a) In the case of any company that has a capital divided into shares upon the application of members holding not less than one-fifth of the whole shares of the company for the time being issued; b) In the case of any company not having a capital divided into shares upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members,

1901, c. 20, § 125.

**On what application to be based. 126.** The application shall be supported by such evidence as the Lieutenant-Governor in Council may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made and that they are not actuated by malicious motives in instituting the same; the Lieutenant-Governor in Council may also require applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

1901, c. 20, § 126.



**Officers, etc., to produce books, etc., for inspection. 127.** It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power; and any inspector may examine upon oath the officers and agents of the company in relation to its business and may administer such oath accordingly. 2. If any officer or agent refuses to produce any book or document hereby directed to be produced or to answer any question relating to the affairs of the company he shall upon summary conviction be liable to a penalty not exceeding \$ 25 in respect of each offence.

1901, c. 20, § 127.

**Report. Expenses. 128.** Upon the conclusion of the examination the inspectors shall report the result of the same to the Lieutenant-Governor in Council; and a copy of such report shall be forwarded by the Territorial Secretary to the registered office of the company; and a further copy shall at the request of the members upon whose application inspection is made be delivered to them or to any one or more of them. 2. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed unless the Lieutenant-Governor in Council shall direct the same to be paid out of the assets of the company which he is hereby authorized to do.

1901, c. 20, § 128.

**Inspectors appointed by special resolution. 129.** Any company under this Ordinance may by special resolution appoint inspectors for the purpose of examining into the affairs of the company; and the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Lieutenant-Governor in Council with this exception that instead of making their report to the Lieutenant-Governor in Council they shall make the same in such manner and to such persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors or to answer any question as they would have incurred if such inspector had been appointed by the Lieutenant-Governor in Council.

1901, c. 20, § 129.

**Proof of admissibility of report in legal proceedings. 130.** A copy of the report of any inspectors appointed under this Ordinance authenticated by the seal of the company into whose affairs they have made the inspection shall be admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in such report.

1901, c. 20, § 130.

#### *Audit.*

**Appointment of auditors. 131.** Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting. 2. If an appointment is not made at an annual general meeting the Registrar may on the application of any member of the company appoint an auditor of the company for the current year and fix the remuneration to be paid to him by the company for his services. 3. A director or officer of the company shall not be capable of being appointed auditor of the company. 4. The first auditors of the company may be appointed by the directors before the statutory meeting; and if so appointed shall hold office until the first annual general meeting unless previously removed by a resolution of the shareholders in general meeting in which case the shareholders at such general meeting may appoint auditors. 5. The directors of the company may fill any casual vacancy in the office of auditor; but while any such vacancy continues the surviving or continuing auditor or auditors if any may act.

1901, c. 20, § 131.

**Remuneration of auditors. 132.** Subject to the provisions of the next preceding section the remuneration of the auditors of a company shall be fixed by the company in general meeting; except that the remuneration of any auditors appointed before the statutory meeting or to fill any casual vacancy may be fixed by the directors.

1901, c. 20, § 132.

**Rights and duties of auditors. 133.** Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors; and the auditors shall sign a certificate at the foot of the balance

sheet stating whether or not all their requirements as auditors have been complied with; and shall make a report to the shareholders on the accounts examined by them and on every balance sheet laid before the company in general meeting during their tenure of office; and in every such report shall state whether in their opinion the balance sheet referred to in their report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company; and such report shall be read before the company in general meeting.  
1901, c. 20, § 133.

*Legal proceedings.*

**Evidence of proceedings at meetings. 134.** Every company under this Ordinance shall cause minutes of all resolutions and proceedings of general meetings of the company and of the directors and managers of the company in cases where there are directors or managers to be duly entered in the books to be from time to time provided for the purpose; and any such minute as aforesaid if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or by the chairman of the next succeeding meeting shall be received as evidence in all legal proceedings; and until the contrary is proved every general meeting of the company or meeting of directors or managers in respect of proceedings of which minutes have been so made shall be deemed to have been duly held and convened and all resolutions passed thereat or proceedings had to have been duly passed and had and all appointments of directors, managers, or liquidators shall be deemed to be valid; and all acts done by such directors, managers, or liquidators shall be deemed to be valid notwithstanding any defect that may afterwards be discovered in their appointments or qualification.  
1901, c. 20, § 134.

**Plaintiff company to give security for costs in certain cases. 135.** Where a company under this Ordinance is plaintiff in any action, suit or other legal proceeding any judge having jurisdiction in the matter may if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs require sufficient security to be given for such costs and may stay all proceedings until such security is given.  
1901, c. 20, § 135.

**Declaration in action against member. 136.** In any action or suit brought by a company under this Ordinance against any member to recover any call or other money due from such member in his character of member it shall not be necessary to set forth the special matter but it shall be sufficient to allege that the defendant is a member of the company and is indebted to the company in respect of a call made or other moneys due whereby a right of action or suit hath accrued to the company.  
1901, c. 20, § 136.

*False statement.*

**Penalty for false statement. 137.** If any person in any return, report, certificate, balance sheet, or other document required by or for the purposes of this Ordinance wilfully makes a statement false in any material particular knowing it to be false he shall be liable on summary conviction to a penalty not exceeding \$ 500 or to imprisonment for a term not exceeding four months, or to both fine and imprisonment.  
1901, c. 20, § 137.

*Arbitration.*

**Power to companies to refer matters to arbitration. 138.** Any company under this Ordinance may from time to time by writing under its common seal agree to refer and may refer to arbitration in accordance with *The Arbitration Ordinance* any existing or future difference, question, or other matter whatsoever in dispute between itself and any other company or person; and the parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves or by the directors or other managing body of such companies.  
1901, c. 20, § 138.

**Application of Arbitration Ordinance. 139.** All the provisions of *The Arbitration Ordinance* shall be deemed to apply to arbitrations between companies and persons in pursuance of this Ordinance.  
1901, c. 20, § 139.

**Lieutenant-Governor in Council may alter forms in Schedule. 140.** The forms set forth in the second Schedule hereto or forms as near thereto as circumstances



admit shall be used in all matter to which such forms refer. 2. The Lieutenant-Governor in Council may from time to time make such alterations in the forms in the second Schedule or make such additions to the said forms as may be requisite. 3. Any alteration or any form when altered shall be published in the *Gazette*; and upon such publication being made such alteration or such form shall have the same force as if it were included in the Schedule to this Ordinance and shall be substituted in or for the form it alters.

1901, c. 20, § 140.

#### *Part IV. Application to existing Companies.*

**Existing companies may register. 141.** Any company heretofore incorporated by any special Ordinance of the Territories or by letters patent under the provisions of any Ordinance of the Territories may register itself under this Ordinance as a company limited by shares.

1901, c. 20, § 141.

**Procedure for registration of existing company. 142.** The procedure for registering any existing company shall be as follows: 1. If it is not desired to make any alteration in the name, objects, or capital of the company nor to provide for a new allotment of shares the directors may apply to the Registrar to have the company registered. 2. If the directors should desire to change the name of the company or to extend its objects or to increase or reduce its capital or to provide for a new allotment of shares they shall call a meeting of the shareholders of the company by sending to each shareholder through the post in a prepaid letter addressed to him at his registered place of abode seven days' notice at the least specifying the place the day and the hour of meeting and containing a copy of the resolution to be submitted to such meeting and such resolution shall contain particulars of the proposed alterations. 3. In case it shall be resolved by a vote of not less than two-thirds in value of the shareholders present in person or by proxy at such meeting that the company be registered under this Ordinance in manner specified the directors shall apply to the Registrar to have the company so registered.

1901, c. 20, § 142.

**Application for registration by existing company. 143.** When an existing company applies for registration under this Ordinance there shall be delivered to the Registrar the following documents duly verified: 1. A list showing the names, addresses, and occupations of all persons who on a day named on such list and not being more than ten clear days before the day of registration were members of such company with the addition of the shares held by such persons respectively distinguishing in cases where such shares are numbered each share by its number; 2. The names of the directors of such company; 3. A copy of any letters patent, certificate, or other instrument constituting or regulating the company or if incorporated by a special Ordinance a reference to such Ordinance and any amendments thereto; 4. A statement verifying the following particulars, that is to say: a) The nominal capital of the company and the number of shares into which it is divided; b) The number of shares taken and the amount paid on each share; c) The name of the company with the addition of the word "Limited" as the last word thereof; 5. A memorandum of association or a statement that the letters patent or special Ordinance of incorporation as the case may be shall be treated as a memorandum of association and articles of association if desired executed in the same manner and containing the same particulars as are necessary upon the first registration of a company; 6. A copy of the resolution if any passed at the meeting of the company referred to in the preceding section.

1901, c. 20, § 143.

**Power to existing company to vary objects of company, etc., upon registration.**

**144.** Where an existing company applies for registration as aforesaid the memorandum of association shall conform with the terms of the resolution of the company; and may if so authorized extend, vary, or limit the powers and objects of the old company; and the certificate of registration may be issued to the new company by the name of the old company or by any other name in which the last word shall be "Limited." 2. Where an existing company applies for registration as aforesaid the capital of the company may be increased or decreased to any amount which may be fixed by the resolution of the company authorizing such resolution. 3. The said resolution may prescribe the manner in which the shares or stock in the new company are to be allotted; and in default of its so doing the control of the allotment shall

vest absolutely in the directors of the new company. 4. Whenever the Registrar considers that public notice of an intended application as aforesaid should be given he may require such notice to be published in the *Gazette* or otherwise as he thinks proper. 5. The Registrar may further require evidence of the existence of a company applying for registration as aforesaid.

1901, c. 20, § 144.

**Certificate of registration of existing company. 145.** Upon compliance by an existing company with the aforesaid requirements the Registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this Ordinance and that it is limited; and thereupon such company shall be incorporated and shall have perpetual succession and a common seal with power to hold lands.

1901, c. 20, § 145.

**Certificate of incorporation to be conclusive evidence. 146.** A certificate of incorporation given at any time to any company registered in pursuance of this part of this Ordinance shall be conclusive evidence that all the requirements herein contained in respect of registration under this Ordinance have been complied with; and that the company is authorized to be registered under this Ordinance as a limited company; and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Ordinance.

1901, c. 20, § 146.

**Transfer of property to company. 147.** All such property real and personal including all interests and right in, to, and out of property real and personal and including obligations and things in action as may belong to or be vested in the company at the date of its registration under this Ordinance shall on registration pass to and vest in the company as incorporated under this Ordinance for all the estate and interest of the company therein.

1901, c. 20, § 147.

**Registration not to affect obligation previously incurred. 148.** The registration in pursuance of this part of this Ordinance of any company shall not affect or prejudice the liability of such company to have enforced against it or its right to enforce any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of such company previous to such registration.

1901, c. 20, § 148.

**Continuation of existing actions. 149.** All such actions and other legal proceedings as may at the time of the registration of any company registered in pursuance of this part of this Ordinance have been commenced by or against such company or any officer or member thereof may be continued in the same manner as if such registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of such company upon any judgment, decree, or order obtained in any action, suit, or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree, or order an order may be obtained for winding-up the company.

1901, c. 20, § 149.

#### *Repeal.*

**150. Repeal.** Chapter 61 of The Consolidated Ordinances, 1898, intituled An Ordinance respecting the Incorporation of Joint Stock Companies, chapter 62 of The Consolidated Ordinances, 1898, intituled An Ordinance to authorize the changing of the names of Incorporated Companies, and chapter 64 of The Consolidated Ordinances, 1898, intituled An Ordinance respecting Mining Companies, chapter 12 of the Ordinances of 1899 and chapter 17 of the Ordinances of 1900 amending chapter 61 of The Consolidated Ordinances, 1898, and chapter 19 of the Ordinances of 1900 amending chapter 64 of The Consolidated Ordinances, 1898, are hereby repealed: Provided that such repeal shall not affect: a) Anything duly done under any of the said repealed Ordinances; b) The corporate existence of any company incorporated under the said repealed Ordinances; c) Any right or privilege acquired or liability incurred under any of the said repealed Ordinances; d) Any conveyance, transfer, mortgage, deed, or other instrument made in pursuance of the said repealed Ordinances.

1901, c. 20, § 150.

**Compulsory registration. 151.** Every company incorporated under the said Ordinances hereby repealed or under any general Ordinance of the Territories relating to the incorporation of joint stock companies shall register itself as a company under



this Ordinance on or before the first day of July, 1902. 2. No fees shall be charged in respect of the registration of any company required to register by this section except in respect of increase of capital.

1901, c. 20, § 151.

**Penalty for company not registering. 152.** If any company required by the preceding section to register under this Ordinance makes default in complying with the provisions thereof then from and after the date upon which such company is required to register under this Ordinance until the day on which such company is registered under this Ordinance which it is empowered to do at any time the following consequences shall ensue, that is to say: a) The company shall be incapable of suing but shall not be incapable of being made a defendant to a suit; b) No dividend shall be payable to any shareholder in such company; c) Each director or manager of the company shall for each day during which the company so being in default carries on business on summary conviction be liable to a penalty not exceeding \$ 25; nevertheless such default shall not render the company so being in default an illegal one nor subject to any penalty or disability other than as specified in this section.

1901, c. 20, § 152.

### *First Schedule.*

#### **Table A. Regulations for Management of a Company Limited by Shares.**

##### *Shares.*

1. If several persons are registered as joint holders of any shares any of such persons may give effectual receipts for any dividend payable in respect of such shares.

2. Every member shall on payment of twenty-five cents or such less sum as the company in general meeting may prescribe be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon.

3. If such certificate is worn out or lost it may be renewed on payment of twenty-five cents or such less sum as the company in general meeting may prescribe.

##### *Calls on shares.*

4. The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit provided that thirty days' notice at least is given of each call and each member shall be liable to pay the amount of calls so made to the persons and at the time and place appointed by the directors.

5. A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

6. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

7. The directors may if they think fit receive from any member willing to advance the same all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and upon the money so paid in advance or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made the company may pay interest at such rate as the member paying such sum in advance and the directors may agree upon.

##### *Transfer of shares.*

8. The instrument of transfer of any shares in the company shall be executed both by the transferrer and the transferee, and the transferrer shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

9. Shares in the company shall be transferred in the following form:

I, A. B., of \_\_\_\_\_, in consideration of the sum of \_\_\_\_\_ dollars paid to me by C. D., of \_\_\_\_\_, do hereby transfer to the said C. D. the share (or shares) numbered \_\_\_\_\_ standing in my name in the books of the \_\_\_\_\_ company to hold unto the said C. D., his executors, administrators, and assigns subject to the several conditions on which I held the same at the time of the execution hereof; and I, the said C. D., do hereby agree to take the said share (or shares) subject to the same conditions. As witness our hands the \_\_\_\_\_ day of \_\_\_\_\_

10. The company may decline to register any transfer of shares made by a member who is indebted to it.

11. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

##### *Transmission of shares.*

12. The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his share.

13. Any person becoming entitled to a share in consequence of the death or insolvency of any member may be registered as a member upon such evidence being produced as may from time to time be required by the company.

14. Any person who has become entitled to a share in consequence of the death or insolvency of any member may instead of being registered himself elect to have some person to be named by him registered as a transferee of such share.

15. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

16. The instrument of transfer shall be presented to the company accompanied with such evidence as the directors may require to prove the title of the transferrer and thereupon the company shall register the transferee as a member.

#### *Forfeiture of shares.*

17. If any member fails to pay any call on the day appointed for the payment thereof the directors may at any time thereafter during such time as the call remains unpaid serve a notice on him requiring him to pay such call together with interest and any expenses that may have accrued by reason of such nonpayment.

18. The notice shall name a further day on or before which such call and all interest and expenses that may have accrued by reason of such nonpayment are to be paid. It shall also name the place where payment is to be made the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable. The notice shall also state that in the event of non-payment at or before the time and at the place appointed the shares in respect to which such call was made will be liable to be forfeited.

19. If the requisitions of any such notice as aforesaid are not complied with any share in respect of which such notice has been given may at any time thereafter before payment of all calls, interest, and expenses due in respect thereof has been made be forfeited by a resolution of the directors to that effect.

20. Any share so forfeited shall be deemed to be the property of the company and may be disposed of in such manner as the company in general meeting thinks fit.

21. Any members whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

22. An affidavit that the call in respect of a share was made and notice thereof given and that default in payment of the call was made and that the forfeiture of the share was made by resolution of the directors to that effect shall be sufficient evidence of the facts therein stated as against all persons entitled to such share and such affidavit and the receipt of the company for the price of such share shall constitute a good title to such share and the certificate of proprietorship shall be delivered to the purchaser and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase and he shall not be bound to see to the application of the purchase money nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

#### *Conversion of shares into stock.*

23. The directors may with the sanction of the company previously given in general meeting convert any paid up shares into stock.

24. When any shares have been converted into stock the several holders of such stock may thenceforth transfer their respective interests therein or any part of such interests in the same manner and subject to the same regulations as and subject to which any shares in the capital may be transferred or as near thereto as circumstances admit.

25. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock; and such interest shall in proportion to the amount thereof confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company and for other purposes as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges or advantages except the participation in the dividends and profits of the company shall be conferred by any such aliquot part of consolidated stock as would not if existing in shares have conferred such privileges or advantages.

#### *Increase in capital.*

26. The directors may with the sanction of a special resolution of the company previously given in general meeting increase its capital by the issue of new shares such aggregate increase to be of such amount and to be divided into shares of such respective amounts as the company in general meeting directs or if no direction is given as the directors may think expedient.

27. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital all new shares shall be offered to the members in proportion to the existing shares held by them and such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting the time within which the offer if not accepted will be deemed to be declined; and after the expiration of such time or on the receipt of an intimation from the member whom such notice is given that he declines to accept the shares offered the directors may dispose of the same in such manner as they think most beneficial to the company.



28. Any capital raised by the creation of new shares shall be considered as part of the original capital and shall be subject to the same provisions with reference to the payment of the calls and the forfeiture of shares or nonpayment of calls or otherwise as if it had been part of the original capital.

*General meetings.*

29. The first general meeting shall be held at such time not being more than four months after the registration of the company and at such place as the directors may determine.

30. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed a general meeting shall be held on the first Monday in February every year at such place as shall be determined by the directors.

31. The above mentioned general meetings shall be called ordinary meetings; all other meetings shall be called extraordinary.

32. The directors may whenever they think fit and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company convene an extraordinary general meeting.

33. Any requisition made by the members shall express the object of the meeting proposed to be called and shall be left at the registered office of the company.

34. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition the requisitionists or any other members amounting to the required number may themselves convene an extraordinary general meeting.

*Proceedings at general meeting.*

35. Seven days' notice at the least specifying the place, the day and the hour of meeting and in case of special business the general nature of such business shall be given to the members in manner hereafter mentioned or in such other manner if any as may be prescribed by the company in general meeting but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

36. All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend and the consideration of the accounts, balance sheets, and the ordinary report of the directors.

37. No business shall be transacted at any general meeting except the declaration of a dividend unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows, that is to say: If the persons who have taken shares in the company at the time of the meeting do not exceed ten in number the quorum shall be three; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty and one for every ten additional members after fifty with this limitation that no quorum shall in any case exceed twenty.

38. If within one hour from the time appointed for a meeting a quorum is not present the meeting if convened upon the requisition of members shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place; and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

39. The president of the company shall preside as chairman at every general meeting of the company.

40. If there is no such chairman or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting the members present shall choose some one of their number to be chairman.

41. The chairman may with the consent of the meeting adjourn any meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

42. At any general meeting unless a poll is demanded by at least three members a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

43. If a poll is demanded by three or more members it shall be taken in such manner as the chairman directs and the result of such poll shall be deemed to be the resolution of the company in general meeting. In case of an equality of votes at any general meeting the chairman shall be entitled to a second or casting vote.

*Vote of members.*

44. Every member shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred and an additional vote for every ten shares beyond the first hundred shares.

45. If any member is a lunatic or idiot he may vote by his committee, *curator bonis*, or other legal curator or guardian.

46. If one or more persons are jointly entitled to a share or shares the member whose name stands first in the register of members as one of the holders of such share or shares and no other shall be entitled to vote in respect of the same.

47. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

48. Votes may be given either personally or by proxy.

49. The instrument appointing a proxy shall be in writing under the hand of the appointer or if such appointer is a corporation under their common seal and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the company.

50. The instrument appointing a proxy shall be deposited at the registered office of the company not less than twenty-four hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

51. Any instrument appointing a proxy shall be in the following form:

<p>I, _____, of _____, Company, Limited, and entitled to _____ of _____ as my proxy to vote for me and on my behalf at the (ordinary or extraordinary as the case may be) general meeting of the company to be held on the day of _____ and at any adjournment thereof (or at any meeting of the company that may be held in the year _____).</p> <p>As witness my hand this _____ day of _____</p> <p>Signed by the said _____ in the presence of _____</p>	<p>_____, of _____, being a member of the _____ vote (or votes) hereby appoint _____ day of _____ in the presence of _____</p>
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*Directors.*

52. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

53. Until directors are appointed the subscribers of the memorandum of association shall be deemed to be directors.

54. The future remuneration of the directors and their remuneration for services performed previously to the first general meeting shall be determined by the company in general meeting.

*Powers of directors.*

55. The business of the company shall be managed by the directors who may pay all expenses incurred in getting up and registering the company and may exercise all such powers of the company as are not by the foregoing Ordinance or by these articles required to be exercised by the company in general meeting subject nevertheless to any regulations of these articles, to the provisions of the foregoing Ordinance and to such regulations being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

56. The continuing directors may act notwithstanding any vacancy in their body.

*Disqualification of directors.*

57. The office of the director shall be vacated: If he holds any other office or place of profit under the company; if he becomes insolvent; if he is concerned in or participates in the profits of any contract with the company. But the above rules shall be subject to the following exceptions: That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is a director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote his vote shall not be counted.

*Rotation of directors.*

58. At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being or if their number is not a multiple of three then the number nearest to one-third shall retire from office.

59. The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall unless the directors agree among themselves be determined by ballot; in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

60. A retiring director shall be re-eligible.

61. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

62. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up the meeting shall stand adjourned till the same day in the next week at the same time and place; and if at such adjourned meeting the places of



the vacating directors are not filled up the vacating directors or such of them as have not had their places filled up shall continue in office until the ordinary meeting in the next year and so on from time to time until their places are filled up.

63. The company may from time to time in general meeting increase or reduce the number of directors and may also determine in what rotation such increased or reduced number is to go out of office.

64. Any casual vacancy occurring in the board of directors may be filled up by the directors but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

65. The company in general meeting may by a special resolution remove any director before the expiration of his period of office and may by an ordinary resolution appoint another person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

#### *Proceedings of directors.*

66. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

67. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected or if at any meeting the chairman is not present at the time appointed for holding the same the directors present shall choose of their number to be chairman of such meeting.

68. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

69. A committee may elect a chairman of their meetings. If no such chairman is elected or if he is not present at the time appointed for holding the same the members present shall choose one of their number to be chairman of such meeting.

70. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.

71. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid or that they or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified to be a director.

#### *Dividends.*

72. The directors may with the sanction of the company in general meeting declare a dividend to be paid to the members in proportion to their shares.

73. No dividend shall be payable except out of the profits arising from the business of the company.

74. The directors may before recommending any dividend set apart out of the profits of the company such sum as they think proper as a reserve fund to meet contingencies or for equalizing dividends or for repairing or maintaining the works connected with the business of the company or any part thereof; and the directors may invest the sum so set apart as a reserve fund upon such securities as they may select.

75. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

76. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

77. No dividend shall bear interest as against the company.

#### *Accounts.*

78. The directors shall cause true accounts to be kept: Of the stock-in-trade of the company; of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place; and of the credits and liabilities of the company. The books of account shall be kept at the registered office of the company and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting shall be open to the inspection of the members during the hours of business.

79. Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year made up to a date not more than three months before such meeting.

80. The statement so made shall show arranged under the most convenient heads the amount of gross income distinguishing the several sources from which it has been derived and the amount of gross expenditure distinguishing the expense of the establishment, salaries, and





Dr.	Balance Sheet of the	Co. made up to	Cr.
	Capital and Liabilities.	Property and Assets.	
I. Capital . . . . .	<p>Showing:</p> <p>1 The number of shares . . . . .</p> <p>2 The amount paid per share. . . . .</p> <p>3 If any arrears of calls, the nature of the arrears and the names of the defaulters.</p> <p>4 The particulars of any forfeited shares.</p>	<p>7 Immovable property, distinguishing:</p> <p>a) Freehold land. . . . .</p> <p>b) Freehold buildings . . . . .</p> <p>c) Leasehold buildings . . . . .</p> <p>8 Moveable property, distinguishing:</p> <p>d) Stock in trade:</p> <p>e) Plant.</p> <p>The cost to be stated, with deductions for deterioration in value, as charged to the reserve fund or profit and loss.</p>	\$
II. Debts and Liabilities of the Company.	<p>Showing:</p> <p>5 The amount of loans on mortgages or debenture bonds.</p> <p>6 The amount of debts owing by the company, distinguishing:</p> <p>a) Debts for which acceptances have been given;</p> <p>b) Debts to tradesmen for supplies of stock in trade or other articles;</p> <p>c) Debts for law expenses;</p> <p>d) Debts for interests on debentures or other loans;</p> <p>e) Unclaimed dividends;</p> <p>f) Debts not enumerated above.</p> <p>Showing:</p> <p>The amount set aside from profits to meet contingencies.</p> <p>Showing:</p> <p>The disposable balance for payment of dividend, etc.</p>	<p>9 Debts considered good for which the company hold bills or other securities.</p> <p>10 Debts considered good for which the company hold no security.</p> <p>11 Debts considered doubtful and bad—Any debt due from a director or other officer of the company to be separately stated.</p> <p>Showing:</p> <p>12 The nature of investment and rate of interest.</p> <p>13 The amount of cash, where lodged, and if bearing interest.</p>	\$
VI. Reserve Fund . . . . .			
VII. Profit and Loss.			
Contingent Liabilities . . . . .	<p>Claims against the company not acknowledged as debts.</p> <p>Moneys for which the company is contingently liable.</p>		

**Form B. Memorandum and Articles of Association of a Company Limited by Guarantee and not Having a Capital Divided into Shares.**

*Memorandum of association.*

1. The name of the company is "The Western Ranchman's Supply Association, Limited."
2. The registered office of the company will be situate in
3. The objects for which the company is established are "the purchasing of all classes of goods, wares, and merchandise and supplying the same to the members of the company and the doing all such other things as are incidental or conducive to the attainment of the above objects."
4. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member or within one year afterwards for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member and the costs, charges, and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding \_\_\_\_\_ dollars:

Provided that nothing herein contained shall be deemed to confer upon the company any powers to which the jurisdiction of the Legislature of the Province of Alberta does not extend, and particularly shall not be deemed to confer the right to issue promissory notes in the nature of bank notes; and all the powers in the said memorandum of association contained shall be exercisable subject to the provisions of the laws in force in Alberta and regulations made thereunder in respect of the matters therein referred to, and especially with respect to the construction and operation of railways, telegraph and telephone lines, the business of insurance, and any other business with respect to which special law and regulations may now be or may hereafter be put in force.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

*Names, addresses, and descriptions of subscribers:*

- |                                |          |
|--------------------------------|----------|
| 1. John Jones, of . . . . .    | merchant |
| 2. John Smith, of . . . . .    | "        |
| 3. Thomas Green, of . . . . .  | "        |
| 4. John Thompson, of . . . . . | "        |
| 5. Caleb White, of . . . . .   | "        |

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Witness to the above signatures —

A. B., of \_\_\_\_\_

*Articles of association to accompany preceding memorandum of association.*

1. The company for the purpose of registration is declared to consist of five hundred members.
2. The directors hereinafter mentioned may whenever the business of the association requires it register an increase of members.

*Definition of members.*

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

*General meetings.*

4. The first general meetings shall be held at such time not being more than three months after the incorporation of the company and at such place as the directors may determine.
5. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed a general meeting shall be held on the first Monday in February in every year at such place as may be determined by the directors.
6. The above mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.
7. The directors may whenever they think fit and they shall upon a requisition made in writing by any five or more members convene an extraordinary general meeting.
8. Any requisition made by the members shall express the object of the meeting proposed to be called and shall be left at the registered office of the company.
9. Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition the requisitionists or any other five members may themselves convene a meeting.

*Proceedings at general meetings.*

10. Seven days' notice at the least specifying the place, the day and the hour of meeting and in case of special business the general nature of such business shall be given to members in manner hereinafter provided or in such other manner if any as may be prescribed by the com-



pany in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors.

12. No business shall be transacted at any meeting except the declaration of a dividend unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows, that is to say: If the members of the company at the time of the meeting do not exceed ten in number the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty and one for every ten additional members after fifty with this limitation that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present the meeting if convened upon the requisition of the members shall be dissolved. In any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present it shall be adjourned *sine die*.

14. The chairman if any of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman or if at any meeting he is not present at the time of holding the same the members present shall choose some one of their number to be chairman at such meeting.

16. The chairman may with the consent of the meeting adjourn any meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting unless a poll is demanded by at least five members a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company shall be sufficient evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution.

18. If a poll is demanded in manner aforesaid the same shall be taken in such manner as the chairman directs and the result of such poll shall be deemed to be the resolution of the company in general meeting.

#### *Votes of members.*

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot he may vote by his committee, *curator bonis*, or other legal curator or guardian.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointer or if such appointer is a corporation under its common seal.

23. No person shall be appointed a proxy who is not a member and the instrument appointing him shall be deposited at the registered office of the company not less than twenty-four hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form:

Company, Limited.

I, \_\_\_\_\_, of \_\_\_\_\_ being a member of the  
Company, Limited, hereby appoint \_\_\_\_\_ of \_\_\_\_\_, as my proxy to  
vote for me and on my behalf at the (ordinary or extraordinary, as the case may be) general  
meeting of the company to be held on the \_\_\_\_\_ day of \_\_\_\_\_,  
and at any adjournment thereof to be held on the \_\_\_\_\_ day of \_\_\_\_\_  
next (or any meeting of the company that may be held in the year 19\_\_\_\_).

As witness my hand this \_\_\_\_\_ day of \_\_\_\_\_

Signed by the said \_\_\_\_\_ in the presence of \_\_\_\_\_

#### *Directors.*

25. The number of directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed the subscribers of the memorandum of association shall for all the purposes of this Ordinance be deemed to be directors.

#### *Powers of directors.*

27. The business of the company shall be managed by the directors who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

#### *Election of directors.*

28. The directors shall be elected annually by the company in general meeting.

#### *Business of company.*

(Here insert rules as to mode in which business of company is carried on.)

Notices.

29. A notice may be served by the company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

30. Any notice if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that a letter containing the notice was properly addressed and put into the post office.

Form C. Memorandum and Articles of Association of a Company Limited by Guarantee and Having a Capital Divided into Shares.

Memorandum of association.

- 1. The name of the company is "The Highland Hotel Company Limited."
- 2. The registered office of the company will be situate in
- 3. The objects for which the company is established are: "Facilitating travelling in the Territories by providing hotels and conveyances for the accommodation of travellers and the doing all such other things as are incidental or conducive to the attainment of the above object."
- 4. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member or within one year afterwards for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding dollars.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

Names, addresses, and descriptions of subscribers:

- 1. John Jones, of merchant
- 2. John Smith, of "
- 3. Thomas Green, of "
- 4. John Thompson, of "
- 5. Caleb White, of "

Dated the day of 19

Witness to the above signatures —

A. B., of

Articles of association to accompany preceding memorandum of association.

- 1. The capital of the company shall consist of dollars divided into shares of dollars each.
- 2. The directors may with the sanction of the company in general meeting reduce the amount of shares.
- 3. The directors may with the sanction of the company in general meeting cancel any shares belonging to the company.
- 4. All the articles of Table A in the schedule to *The Companies Ordinance* shall be deemed to be incorporated with these articles and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in capital of the company set opposite our respective names.

Names, addresses, and descriptions of subscribers.		No. of shares taken by each subscriber.
1. John Jones, of	merchant	200
2. John Smith, of	"	25
3. Thomas Green, of	"	30
4. John Thompson, of	"	40
5. Caleb White, of	"	15
Total shares taken		310
Dated the day of		19
Witness to the above signatures —		
A. B., of		

Form D. Memorandum and Articles of Association of an Unlimited Company Having a Capital Divided into Shares.

Memorandum of association.

- 1. The name of the company is "The Patent Stereotype Company".
- 2. The registered office of the company will be situate in



3. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates of which method John Smith of is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

*Names, addresses, and descriptions of subscribers:*

- |                                |          |
|--------------------------------|----------|
| 1. John Jones, of . . . . .    | merchant |
| 2. John Smith, of . . . . .    | "        |
| 3. Thomas Green, of . . . . .  | "        |
| 4. John Thompson, of . . . . . | "        |
| 5. Caleb White, of . . . . .   | "        |

Dated the                      day of                      19

Witness to the above signatures —

A. B., of

**Articles of association to accompany the preceding memorandum of association.**

*Capital of the company.*

of	The capital of the company is	dollars divided into	shares
	dollars each.		

### Application of Table A.

All the articles in Table A in the Schedule to *The Companies Ordinance* shall be deemed to be incorporated with these articles and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses, and descriptions of subscribers.	No. of shares taken by subscribers.
1. John Jones, of . . . . . merchant	1
2. John Smith, of . . . . . "	5
3. Thomas Green, of . . . . . "	2
4. John Thompson, of . . . . . "	2
5. Caleb White, of . . . . . "	3
Total shares taken . . . . .	13

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Witness to the above signatures —

A. B., of

**Form E as required by the Second Part of the Ordinance.**

Summary of Capital and Shares of the Company made up to the day of  
Nominal Capital \$ , divided into shares of \$ each.

Nominal Capital \$ \_\_\_\_\_, divided into \_\_\_\_\_ shares of \$ \_\_\_\_\_ each.

Number of shares taken up to the day of

There has been called up on each share \$

Total amount of calls received \$

Total amount of calls unpaid \$

List of persons holding shares in the \_\_\_\_\_ Company on the \_\_\_\_\_ day of \_\_\_\_\_ and persons who have held shares thereon at any time during the year immediately preceding the said day of \_\_\_\_\_ showing their names and addresses and an account of the shares so held.

[illegible]

## b) Cons. Ord., 1905, c. 111. An Ordinance respecting the Voluntary Winding-Up of Joint Stock Companies.<sup>1)</sup>

**Short title.** 1. This Ordinance may be cited as *The Companies Winding-up Ordinance, 1903*.

### *Interpretation.*

**Interpretation.** 2. Where the expressions following occur in this Ordinance they shall unless a contrary intention appears be construed as follows: 1. "Company" shall mean any company or association to which this Ordinance is applicable; 2. "Court" shall mean the Supreme Court of the North-West Territories, and any judge of the Court may at any time whether sitting in chambers or in court exercise all the powers conferred by this Ordinance upon the Court; 3. "Contributory" shall mean any person liable to contribute to the assets of a company under this Ordinance in the event of the same being wound up, and in all proceedings prior to the final determination of such persons any person alleged to be a contributory, and shall also include the personal representative or representatives of any such person; 4. "Extraordinary resolution" shall mean a resolution passed by a majority of not less than three-fourths of such members of the company for the time being entitled to vote as may be present in person, or by proxy in cases where by the Ordinance or charter or instrument of incorporation or the regulations of the company proxies are allowed, at any general meeting of which notice specifying the intention to propose such resolution has been duly given; 5. "Special resolution" shall mean a resolution passed in the manner necessary for an extraordinary resolution where the resolution after having been so passed as aforesaid has been confirmed by a majority of such members entitled according to the Ordinance, charter, or instrument of incorporation or the regulations of the company to vote as may be present, in person or by proxy, at a subsequent general meeting of which notice has been duly given and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which the resolution was first passed; 6. "Members" shall mean those persons only who for the time being are entitled to vote at general meetings of the company.

### *Application of Ordinance.*

**Application of Ordinance.** 3. This Ordinance shall apply to all incorporated companies or associations incorporated by the Legislature of the Territories or under the authority of any Ordinance of the Territories.

### *When companies may be wound up.*

**When companies may be wound up voluntarily; on special resolution; on extraordinary resolution.** 4. A company may be wound up under this Ordinance: 1. Where the period, if any, fixed for the duration of the company by the Ordinance, charter, or instrument of incorporation has expired; or where the event, if any, has occurred upon the occurrence of which it is provided by the Ordinance or charter, or instrument of incorporation that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up; 2. Where the company has passed a special resolution requiring the company to be wound up; 3. Where the company though it may be solvent as respects creditors has passed an extraordinary resolution to the effect that it has been proved to the satisfaction of the members thereof that the company can not by reason of its liabilities continue its business and that it is advisable to wind up the same.

**When by order of the Court.** 5. Where no such resolution has been passed as mentioned in the next preceding section, the Court may, on the application of a contributory, make an order for winding up in case the Court is of opinion that it is just and equitable that the company should be wound up.

**Commencement of winding up.** 6. A winding-up shall be deemed to commence at the time of the passing of the resolution authorising the winding-up or the making of the order directing the winding up as the case may be.

### *Consequences of commencing to wind up.*

**Consequences of commencing to wind up. Extent to which company to exist after commencement of winding-up. Property of company. Appointment of liquidators.**

<sup>1)</sup> N. W. T. Ords., 1903 (Sess. I.), c. 13.



**Remuneration. Security. One liquidator. Powers of directors to cease. Powers of several liquidators. Appointment of inspectors. Revocations. Remuneration. One inspector. Direction as to disposal of property of the company by liquidation.**

7. The following consequences shall ensue upon the commencement of the winding-up of a company under the authority of this Ordinance: 1. The company shall, from the date of the commencement of the winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof; and any transfers of shares, except transfers made to or with the sanction of the liquidators, or any alteration in the status of the members of the company, after the commencement of the winding-up, shall be void, but the corporate existence and all the corporate powers of the company shall, notwithstanding it may be otherwise provided by the Ordinance, charter, or instrument of incorporation, continue until the affairs of the company are wound up; 2. Subject to the provisions of section 10 hereof the property of the company shall be applied in satisfaction of its liabilities *pari passu*; and subject thereto and to the charges incurred in winding-up its affairs shall, unless it is otherwise provided by the Ordinance, charter, or instrument of incorporation, be distributed amongst the members according to their rights and interests in the company; 3. The company in general meeting, or in default thereof the Court, shall appoint such persons or person as the company or Court thinks fit to be liquidators or a liquidator for the purpose of winding up the affairs of the company and distributing the property and may fix the remuneration to be paid to them or to him, and they or he shall give such security as the contributories or the Court may determine; 4. If one person only is appointed liquidator all the provisions herein contained in reference to several liquidators shall apply to him; 5. Upon the appointment of liquidators all the powers of the directors shall cease; except in so far as the company in general meeting, or the liquidators, may sanction the continuance of such powers; 6. Where several liquidators are appointed every power hereby given may be exercised by such one or more of them as may be determined at the time of the appointment, or at a subsequent meeting of the company, or in default of such determination, by any number of the liquidators not less than two; 7. The members of the company may at any meeting appoint one or more inspectors to superintend and direct the proceedings of the liquidators in the management and winding-up of the estate; and in case of an inspector or inspectors being appointed all the powers of the liquidator shall be exercised subject to the advice and direction of such inspector or inspectors; and the members of the company may also at any subsequent meeting held for that purpose revoke any such appointment; and upon such revocation or in case of death, resignation, or absence from the Territories of an inspector, may appoint another in his stead; and such inspector may be paid such remuneration as the members of the company may determine; 8. If one person only is appointed inspector or if by reason of death, resignation, absence from the Territories or otherwise there is only one inspector all the provisions herein contained in reference to inspectors shall apply to such sole inspector; 9. The members of the company may at any meeting pass any resolution or order directing the liquidators how to dispose of the property, real or personal, of the company; and in default of their doing so the liquidators shall be subject to the directions, orders, and instructions which they from time to time receive from the inspectors, if any, with regard to the mode, terms, and conditions on which they may dispose of the whole or any part of the property of the company.

*General powers of liquidators.*

**Description and general power of liquidator.** 8. The liquidators may be described in all proceedings by the style of "A.B., and C.D., the liquidators of (the particular company in respect of which they are appointed)," and shall have power to do the following things: 1. To bring or defend any action, or other legal proceeding in the name and on behalf of the company; 2. To carry on the business of the company so far as may be necessary for the beneficial winding-up of the same; 3. To sell the real and personal property of the company by public auction or private contract, according to the ordinary mode in which such sales are made, with power to transfer the whole property to any person or company, or to sell the same in parcels, and on such terms as shall seem most advantageous; but no sale of the assets *en bloc* shall be made without the previous sanction of the contributories given at a meeting called for that purpose; 4. In case, after having acted with due diligence in the collection of

the debts, the liquidators find that there remain debts due the attempt to collect which would be more onerous than beneficial to the estate, they shall report the same to the members of the company or inspectors, if any; and with their sanction the liquidators may sell the same by public auction after such advertisement thereof as the members of the company or the inspectors, if any, may order; and pending such advertisement the liquidators shall keep a list of the debts to be sold, open to inspection at their office, and shall also give free access to all documents and vouchers explanatory of such debts; but all debts amounting to more than \$ 100 shall be sold separately except as herein otherwise provided; 5. To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company; and to raise upon the security of the assets of the company, from time to time, any requisite sum or sums of money; and the drawing, accepting, making, or indorsing of such bill of exchange or promissory note on behalf of the company shall have the same effect with respect to the liability of the company as if such bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of carrying on the business thereof; 6. To take out, if necessary, in their official name, letters of administration to the estate of any deceased contributory; and to do in their official name any other act which may be necessary for obtaining payment of any money due from a contributory or from his estate, and which act can not be conveniently done in the name of the company; and in all cases where the liquidators take out letters of administration, or otherwise use their official name for obtaining payment of any money due from a contributory, such money shall for the purpose of enabling them to take out such letters or recover such money be deemed to be due to the liquidators themselves; 7. To execute in the name of the company all deeds, transfers, discharges, assignments, receipts, and other documents; 8. To do and exercise all other acts and things that may be necessary for the winding-up of the affairs of the company and the distribution of its assets; and for such purpose to use when necessary the company's seal.

**Time for creditors to send in claim may be fixed. Liquidators may distribute assets after expiration of time fixed.** 9. The liquidators may fix a certain day on or before which creditors of the company and others having claims thereon are to send in their claims. 2. Such day shall not be less than two months from the first publication or notice thereof. 3. Where liquidators have given notice of the said day by publication in an issue of a newspaper published at or nearest to the chief place of business of the company, in each of the first four weeks of said two months, the liquidator shall, at the expiration of the time named for sending in such claims be at liberty to distribute the assets of the company, or any part thereof, amongst the parties entitled thereto having regard to the claims of which the liquidators have then notice and the liquidators shall not be liable for the assets, or any part thereof, so distributed to any person of whose claim such liquidators had not notice at the time of distributing the said assets, or part thereof, as the case may be; but nothing in this Ordinance contained shall prejudice the right of any creditor or claimant to follow assets into the hands of the person who may have received the same.

**Priority of wages or salary.** 10. In distributing the assets of a company under the provisions of this Ordinance the liquidator shall pay in priority to the claims of the ordinary or general creditors of the company the wages or salary of all persons other than directors in the employment of the company at the time of the making of the winding-up resolution or order, or within one month before the making thereof not exceeding three months' wages or salary, and such persons shall be entitled to rank as ordinary or general creditors of the company for the residue, if any, of their claims.

**Arrangements may be authorized with creditors.** 11. The liquidators may, with the sanction of an extraordinary resolution of the company, or of the Court, make such compromise or other agreement as they deem expedient, with any creditors, or persons claiming to be creditors, or persons having or alleging to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable.

**Power to compromise with debtors and contributories. Take securities.** 12. The liquidators may, with the sanction of an extraordinary resolution of the company, or of the Court, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist



between the company and any contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company, or the winding-up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon; with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give a complete discharge in respect of all or any such calls, debts or liabilities.

**Power to accept shares, etc., as a consideration for sale of property to another company. Sale or arrangements by liquidators binding unless a member objects. Proceedings on objections. Special resolution not invalid because prior to resolution to wind up. Price payable to objecting member. Mode of determining price. Arbitration. Majority to determine disputes. Umpire. 13.** Where a company is proposed to be or is in the course of being wound up and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first-mentioned company with the sanction of a special resolution of the company by whom they were appointed conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, may receive in compensation or in part compensation for such transfer or sale shares or other like interest in such other company, for the purpose of distribution amongst the members of the company which is being wound up or may, in lieu of receiving cash, shares, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company. 2. Any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company which is being wound up, subject to the proviso that if any member of the company which is being wound up, who has not voted in favour of such special resolution passed by the company of which he is a member, at either of the meetings held for passing the same, expresses his dissent from any such special resolution, in writing, addressed to the liquidators or one of them, and left at the head office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient members may require the liquidators to do one of the following things as the liquidators may prefer, that is to say, either: a) To abstain from carrying such resolution into effect, or b) To purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution. 3. No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company or for appointing liquidators. 4. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement but if the parties dispute about the same such dispute shall be settled by arbitration. 5. For the purposes of the arbitration the liquidators shall appoint one arbitrator and the dissentient member shall appoint another and the two arbitrators thus chosen or in case they disagree the Court shall appoint a third arbitrator. 6. The arbitrators thus chosen, or any two of them, or the arbitrator of one party and an arbitrator appointed by the Court in case of the refusal or neglect of either party to appoint an arbitrator shall finally determine the matter in dispute. 7. In case of the disagreement of two arbitrators, where two only are acting, they may appoint an umpire whose award shall be conclusive.

#### *Liability of contributories.*

**Liquidators to settle list of contributories. Shareholders' liability to contribute. Case of transfer of shares by shareholders. Contributories liable in a representative character to be distinguished. List to be evidence of liability. 14.** As soon as may be after the commencement of the winding up of a company the liquidators shall settle a list of contributories. 2. Every shareholder or member of the company or his representative is liable to contribute the amount unpaid on his shares of the capital, or on his liability to the company or to its members or creditors, as the case may be under the Ordinance, charter, or instrument of incorporation of the company; and the amount which he is liable to contribute shall be deemed assets of the company and to be a debt due to the company payable as may be directed or appointed under this Ordinance. 3. Where a shareholder has transferred his shares under circumstances which do not by law free him from liability in respect thereof, or where he is by law

liable to the company or its contributories or any of them to an amount beyond the amount unpaid on his shares, he shall be deemed a member of the company for the purposes of this Ordinance and shall be liable to contribute as aforesaid to the extent of his liabilities to the company or the contributories independently of this Ordinance and the amount which he is so liable to contribute shall be deemed assets and a debt as aforesaid. 4. The list of contributories shall distinguish between persons who are contributories as being representatives of or liable for others. 5. Any list so settled shall be prima facie evidence of the liability of the persons named therein to be contributories.

**Settlement of list by the Court. Procedure on settling list by the Court. Certificate of result of settlement.** 15. The list of contributories may be settled by the Court in which case the liquidators shall make out and leave at the chambers of the Judge a list of the contributories of the company; and such list shall be verified by the affidavit of the liquidators or one of them and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories; and the list may from time to time by leave of the Judge be varied or added to by the liquidators. 2. Upon the list of contributories being left at the chambers of the Judge, the liquidators shall obtain an appointment for the Judge to settle the same, and shall give notice in writing of the appointment to every person included in the list, and stating in what character and for what number of shares, or interest, such person is included in the list; and in case any variation in or addition to the list is at any time made by the liquidators, a similar notice in writing shall be given to every person to whom the variation or addition applies; all such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition. 3. The result of the settlement of the list of contributories shall be stated in a certificate by the clerk or Registrar of the Court; and certificates may be made from time to time for the purpose of stating the result of the settlement down to any particular time, or to any particular person, or stating any variation of the list.

**Provision for administration if personal representative fails to pay.** 16. If a person made a contributory as personal representative of a deceased contributory makes default in paying any sum to be paid by him proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereof of the money due.

**Calls on contributories.** 17. The liquidators may, at any time and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories, for the time being settled on the list of contributories, to pay, to the extent of their liability, all or any sums the liquidators deem necessary to satisfy the debts and liabilities of the company and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the call is made may partly or wholly fail to pay their respective portions of the same.

#### *Liquidators' duties.*

**Employment of counsel. Liquidators or inspectors not to purchase assets of company. Deposit in bank by liquidators. Separate deposit account to be kept. Withdrawal from account. Liquidators to produce bank pass book at meetings, etc. Liquidators to produce bank pass book when ordered. Liquidator and inspector to be subject to summary jurisdiction. Obedience how enforced.** 18. The liquidators shall not employ any advocate without the consent of the inspectors, or of the members of the company. 2. No liquidator or inspector shall purchase, directly or indirectly, any part of the stock in trade, debts, or assets of any description of the estate. 3. The liquidators shall deposit at interest in some chartered bank, to be indicated by the inspectors or by the Court, all sums of money which they may have in their hands belonging to the company whenever such sums amount to \$100. 4. Such deposits shall not be made in the name of the liquidators generally, on pain of dismissal; but a separate deposit account shall be kept for the company of the moneys belonging to the company, in the name of the liquidators as such, and of the inspectors, if any; and such moneys shall be withdrawn only on the joint cheque of the liquidators and one of the inspectors, if there be any. 5. At every meeting of the members of the company the liquidators shall produce a bank pass book showing the amount of deposits made for



the company, the dates at which the deposits were made, the amounts withdrawn and dates of such withdrawal; of which production mention shall be made in the minutes of the meeting, and the absence of such mention shall be *prima facie* evidence that the pass book was not produced at the meetings. 6. The liquidators shall also produce the pass book whenever so ordered by the Court at the request of the inspectors or a member of the company, and on their refusal to do so they shall be treated as being in contempt of Court. 7. Every liquidator or inspector shall be subject to the summary jurisdiction of the Court in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction; and the performance of his duties may be compelled, and all remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, lien, or right of property upon, in, or to any effects or property in the hands, possession, or custody of a liquidator, may be obtained by an order of the Court on summary application, and not by any action, attachment, seizure, or other proceeding of any kind whatever; and obedience by a liquidator, to such order may be enforced by the Court under the penalty of imprisonment as for contempt of Court or disobedience thereto; or he may be removed in the discretion of the Court.

#### *Expenses.*

**Costs and expenses. 19.** All costs, charges, and expenses properly incurred in the winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

**Remuneration of liquidators in case no other fixed. 20.** In case of there being no agreement or provision fixing the remuneration of the liquidators they shall be entitled to a commission on the net proceeds of the estate of the company of every kind after deducting expenses and disbursements, such commission to be five per cent. on any amount realised not exceeding \$ 1000, the further sum of two and half per cent. on any amount realised in excess of \$ 1000 and not exceeding \$ 5000, and a further sum of one and a quarter per cent. on any amount realised in excess of \$ 5000; which said commission shall be in lieu of all fees and charges for their services.

#### *Meetings.*

**Filling vacancies in office of liquidator. General meetings during winding-up. Annual meetings. Liquidators to call meetings of members of company. Subsequent meetings. Where meetings to be held. One mode of giving notice of meeting. Another mode of notice of meeting. Voting to be in person or by proxy. 21.** If a vacancy in the office of liquidators appointed by the company occurs by death, resignation, or otherwise, a general meeting for the purpose of filling up the vacancy may be convened by the liquidator or liquidators, if any, or if not, then by any member of the company. 2. The liquidators may from time to time, during the continuance of the winding-up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purpose they think fit. 3. In the event of the winding-up continuing for more than one year the liquidators shall summon a general meeting of the company at the end of the first year and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient; and shall lay before the meeting an account showing their acts and dealings and the manner in which the winding-up has been conducted during the preceding year. 4. The liquidators shall also call meetings of the members of the company whenever required in writing so to do, by the inspector or five members of the company or by the Court, and they shall state succinctly in the notice calling any meeting the purpose thereof. 5. The members of the company may, from time to time at any meeting, determine whether subsequent meetings shall be held and in the absence of such a resolution all meetings of the members of the company shall be held at the office of the liquidators or of the company, unless otherwise ordered by the Court. 6. Notice of any meeting shall for the purposes of this Ordinance be deemed to be duly given, and the meeting to be duly held, whenever the notice is given, and meeting held in manner prescribed by the Ordinance, charter, or instrument of incorporation or by the regulations of the company, or by the Court; or notice of the meeting may be given by publication thereof for at least two weeks in the *Official Gazette*, or by such other or additional notice as the Court, or the inspectors, or the company may direct, and except where the Court otherwise directs, by addressing notices of the meeting to the contribu-

tories within the Territories, and to the representatives within the Territories of contributories who reside out of the Territories; and the notices shall be posted at least ten days before the day on which the meeting is to take place, the postage being prepaid by the liquidators. 7. No member of the company shall vote at any meeting unless present personally, or represented by some person having a written authority to be filed with the liquidators to act on his behalf at the meeting, or generally; and when a poll is taken reference shall be had to the number of votes to which each member is entitled by the Ordinance, charter, or instrument of incorporation or the regulations of the company.

*Assistance of the Court.*

**Applications to the Court. Stay of action against company before order to wind-up. Stay of action after commencement of winding-up. Settlement of list of contributories. Meetings of members of company may be ordered. Chairman. Order for delivery by contributories and others of property, etc. Order for payment by contributories. Power to order payment into a bank to account of official liquidator. Order on contributory to be conclusive evidence except as to real estate of deceased. Inspection of books. Examination of persons before Court or liquidator. Production of books, etc. Penalty on person summoned not attending. Mode of examination.. Subpoenas. Liens. Power of Court to assess damages against delinquent directors, etc.** 22. The liquidators or any member of the company may apply to the Court to determine any question arising in the matter of the winding-up; or to exercise all or any of the powers following; and the Court, if satisfied that the determination of the question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially to the application on such terms and subject to such conditions as the Court thinks fit; or it may make such other order on the application as the Court thinks just. 2. The Court at any time after the issue of a summons for winding up a company and before making an order for winding up a company, may restrain further proceedings in any action or proceeding against the company other than under any other authority over which the Legislative Assembly of the Territories has no jurisdiction in and upon such terms as the Court thinks fit. 3. The Court may make an order that no action or other proceedings shall be proceeded with or commenced against the company except with the leave of the Court, and subject to such terms as the Court may impose, and a copy of such order shall forthwith be advertised as the Court may direct; but this subsection shall not apply to proceedings under any Act of the Parliament of Canada under its jurisdiction in matters of bankruptcy and insolvency or otherwise. 4. The Court may settle the list of contributories. 5. The Court may direct any meeting of the members of the company to be summoned, held, and conducted in such manner as the Court thinks fit for the purpose of ascertaining their wishes and may appoint a person to act as chairman of any such meeting and to report the result of such meeting to the Court. 6. The Court may require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker, or agent, or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the liquidators, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being and to which the company is prima facie entitled. 7. The Court may make an order on any contributory for the time being settled on the list of contributories directing payment to be made, in manner in the order mentioned, of moneys due from him or from the estate of the person whom he represents, to the company, exclusive of moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Ordinance. 8. The Court may order any contributory, purchaser, or other person from whom money is due to the company to pay the same into any bank appointed for the purpose in any general order made under this Ordinance, or in default of such bank into a bank named in the order, or into a branch of such bank, to the account of the liquidators instead of to the liquidators, and the order may be enforced in the same manner as if it had directed payment to the liquidators. 9. An order made by the Court in pursuance of this Ordinance upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due, or ordered so to be paid, are due; and all other pertinent matters stated in the order are to be



taken to be truly stated as against all persons and in all proceedings whatsoever. 10. The Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just; and any books and papers in the possession of the company may be inspected in conformity with the order of the Court, but not further or otherwise. 11. The Court may, at any time after the commencement of the winding-up of the company, summon to appear before the Court or liquidators any officers of the company, or any other person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company; and in case of refusal to appear or answer the questions submitted he may be committed and punished by the judge as for a contempt. 12. The Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company. 13. If any person so summoned, after being tendered the fees to which a witness is entitled in the Court, refuses to come before the Court or liquidators at the time appointed, having no lawful impediment, the Court may cause such person to be apprehended and brought before the Court or liquidators for examination. 14. The Court or liquidators may examine upon oath any person appearing or brought before them in the manner aforesaid concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person and require him to subscribe the same. 15. In any proceeding under this Ordinance the Court may order a writ of subpoena ad testificandum or of subpoena duces tecum to issue commanding the attendance as a witness of any person within the limits of the Territories. 16. Where any person claims a lien on papers, deeds, or writings, or documents produced by him such production shall be without prejudice to the lien; and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien. 17. Where in the course of winding-up a company under this Ordinance it appears that any past or present director, manager, liquidator, or any officer of the company has misapplied or retained in his own hands or become liable or accountable for moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company the Court may, on the application of a liquidator or of any contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, liquidator, or other officer, and compel him to repay the moneys so misapplied or retained, or for which he has become liable or accountable together with interest at such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

**Proceedings by contributories at their own expense and for their own benefit only.** 23. If at any time a member of the company desires to cause any proceeding to be taken which, in his opinion would be for the benefit of the company, and the liquidators, with or without the authority of the members of the company or of the inspectors, refuse or neglect to take such proceeding, after being duly required so to do, such member of the company shall have the right to obtain an order of the Court, authorising him to take such proceeding in the name of the liquidators or company, but at his own expense and risk, upon such terms and conditions as to indemnity to the liquidators as the Court may prescribe: and thereupon any benefit derived from such proceeding shall belong exclusively to the member of the company instituting the same, for his benefit and that of any other member of the company who may have joined him in causing the institution of such proceeding; but if, before such order is granted, the liquidators signify to the Court their readiness to institute such proceeding for the benefit of the company, an order shall be made prescribing the time within which they shall do so and in that case any advantage derived from such proceeding shall appertain to the company.

**Appointment by Court. Removal of liquidator. The case of no liquidator.** 24. If from any cause there is no liquidator acting either provisionally or otherwise the Court may, on the application of a member of the company, appoint a liquidator or liquidators. 2. The Court may also on due cause shown remove a liquidator and appoint another liquidator. 3. When there is no liquidator the estate shall be under the control of the Court until the appointment of a new liquidator.

**Rescinding of resolution, etc. by the Court. Confirmation or variation of resolutions, etc. Costs.** 25. Any one or more members of the company whose shares therein in the aggregate exceed \$ 500, who may be dissatisfied with the resolution adopted or orders made by the members of the company or the inspectors, or with any action of the liquidators for the disposal of the property of the company, or any part thereof, or for postponing the disposal of the same, or with reference to any matter connected with the management or winding-up of the estate, may, within four clear days after meeting of the members of the company in case the subject of dissatisfaction is a resolution or order of the members of the company or within four clear days after becoming aware or having notice of the resolution of the inspectors or action of the liquidators where such resolution or action is the subject of dissatisfaction, give to the liquidators notice that he or they will apply to the Court, on the day and at the hour fixed by such notice not being later than four clear days after such notice has been given or as soon thereafter as the parties may be heard before the Court, to rescind such resolutions or orders. 2. The Court, after hearing the inspectors, the liquidators and members of the company present at the time and place so fixed, may approve, rescind, or modify the said resolutions or orders. 3. In case of the application being refused the party applying shall pay all costs occasioned thereby, and in other cases the costs and expenses shall be in the discretion of the Court.

**Appeals. Security for damages and costs. Dismissal of appeal. Judgment final.** 26. Any party who is dissatisfied with any order or decision of the Court in any proceeding under this Ordinance may appeal therefrom to the Court en banc. 2. No such appeal shall be entertained unless the appellant has, within eight days after the rendering of such order or decision, taken proceedings on the said appeal in accordance with the rules of the Court in respect to appeals from final judgments nor unless within the said time he has given security by way of deposit or otherwise to the satisfaction of the Court that he will duly prosecute the said appeal and pay such damages and costs as may be awarded to the respondent. 3. If the party appellant does not proceed with his appeal according to the law or the rules of practice the Court, on the application of the respondent, may dismiss the appeal and condemn the appellant to pay the respondent the costs by him incurred. 4. The judgment of the Court en banc on such appeal shall be final.

**Powers of Court to be in addition to other powers.** 27. Any powers by this Ordinance conferred on the Court shall be deemed to be in addition to any other power of instituting proceedings against any contributory, or against any debtor of the company for the recovery of any call or other sum due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

**Enforcing of orders.** 28. All orders made by the Court may be enforced in the same manner as orders of such Court made in any action pending therein.

#### *Matters of practice.*

**Petition on winding-up. Course of Court on hearing petition.** 29. Any application to the Court for the winding-up of the company under this Ordinance shall be by originating summons which may be issued at the instance of the company, or any contributory or contributories of the company and thereafter the matter shall proceed as a cause in Court and be subject, except where inconsistent herewith, to all the rules applicable to ordinary causes. 2. Upon hearing the summons the Court may dismiss the same, with or without costs, or may adjourn the hearing conditionally or unconditionally, and may make an interim order, or any other order that it deems just.

**Stay of proceedings.** 30. The Court, at any time after an order has been made for winding-up a company, may, upon the application of any contributory, to be made by summons, and upon proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as the Court deems fit.

**Rules of procedure in ordinary cases, etc., to apply. Amendments.** 31. The rules of procedure for the time being as to amendments of pleadings and proceedings in the Court shall, as far as practicable, apply to all pleadings and proceedings under this Ordinance; and any Court before whom such proceedings are being carried on shall have full power and authority to apply the appropriate rules as to amendments



to the proceedings so pending; and no pleading or proceeding shall be void by reason of any irregularity or default which can or may be amended or disregarded under the rules and practice of the Court.

**Books, etc., to be prima facie evidence.** 32. All books, accounts, and documents of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

**Affidavit, before whom sworn.** 33. Any affidavit, affirmation, or declaration required to be sworn or made under the provisions or for the purposes of this Ordinance may be sworn or made before any person authorised to take affidavits for use in the Supreme Court of the North-West Territories.

*Dissolution of company.*

**Account of winding-up to be made by liquidator to a general meeting. Return of holding of meeting to be sent to Registrar of Joint Stock Companies. Dissolution of company.** 34. As soon as the affairs of the company are fully wound up the liquidators shall make up an account showing the manner in which the winding-up has been conducted and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators; the meeting shall be called by advertisement specifying the time, place, and object of such meeting; and the advertisement shall be published one month at least previously thereto. 2. The liquidators shall make a return to the Registrar of Joint Stock Companies of such meeting having been held and of the date at which the same was held; which return shall be filed in his office; and on the expiration of three months from the date of the filing of such return the company shall be deemed to be dissolved.

**Order for dissolution. Report to the Registrar.** 35. Whenever the affairs of the company have been completely wound up the Court may, before the expiration of the said period of three months, make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly; which order shall be reported by the liquidators to the Registrar of Joint Stock Companies.

**Penalty on default in reporting by liquidator or in making return.** 36. If the liquidators make default in transmitting to the Registrar of Joint Stock Companies the return mentioned in section 34 hereof, or in reporting the order, if any, declaring the company dissolved, they shall be severally liable to a penalty not exceeding \$ 20 for every day during which they are in default.

**Disposition of unclaimed dividends.** 37. All dividends deposited in a bank and remaining unclaimed at the time of the dissolution of the company shall be left for three years in the bank where they are deposited, and if still unclaimed shall then be paid over by such bank, with interest accrued thereon, to the Territorial Treasurer, and, if afterwards duly claimed, shall be paid over to the person entitled thereto upon satisfactory proof of his claim being made.

**Deposit by liquidator after dissolution of moneys with sworn statement. Penalty on omission. Money to remain on deposit for three years. Disposal of books, etc., after winding-up. After five years responsibility as to custody of books, etc. to cease.** 38. Every liquidator shall, within thirty days after the date of the dissolution of the company, deposit in the bank appointed or named as hereinbefore provided for, any other money belonging to the estate then in his hands not required for any other purpose authorised by this Ordinance, with a sworn statement and account of such money, and that the same is all he has in his hands; and he shall be subject to a penalty not exceeding \$ 10 for every day on which he neglects or delays such payment; and he shall be a debtor to His Majesty for such money and may be compelled as such to account for and pay over the same. 2. The money so deposited shall be left for three years in the bank and shall be then paid over, with interest accrued thereon to the Territorial Treasurer, and if afterwards claimed shall be paid over to the person entitled thereto upon satisfactory proof of his claim being made. 3. Where a company has been wound up under this Ordinance and is about to be dissolved the books, accounts, and documents of the company and of the liquidators may be disposed of in such a way as the company by an extraordinary resolution directs. 4. After the lapse of five years from the date of such dissolution no responsibility shall rest on the company or liquidators, or any one to whom the

custody of such books, accounts, and documents has been committed, by reason that the same or any of them are not forthcoming to any party claiming to be interested therein.

*Rules of Court.*

**Judges to make rules and forms as to proceedings and costs, etc. Practice till allowance of rules, etc.** 39. The Supreme Court, or any three of the judges thereof, may, from time to time, make and frame and settle the forms, rules, and regulations to be followed and observed in proceedings under this Ordinance and may make rules as to costs, fees, and charges which shall or may be had, taken or paid in all such cases by or to advocates or counsel, and by or to officers of the Court, whether for the officers or for the Crown, and by or to sheriffs, or other persons whom it may be necessary to provide for, or for any service performed or work done under this Ordinance. 2. Until such forms, rules, and regulations are so approved, and subject to any which may be approved, the practice under this Ordinance shall, in cases not hereinbefore provided for, be the same, as nearly as may be, as under *The Winding-Up Act*, and the rules of the said Court made thereunder or applicable thereto.

**c) Cons. Ord., 1905, c. 63. An Ordinance respecting Foreign Companies.<sup>1)</sup>**

**Short title.** 1. This Ordinance may be cited as *The Foreign Companies Ordinance, 1903*.

1903, 1st session, c. 14, § 1.

**Interpretation.** 2. In the construction of this Ordinance and of any rules or forms made in pursuance thereof: 1. "Foreign company" shall mean any company or association incorporated otherwise than by or under the authority of an Ordinance of the Territories for the purpose of carrying on any business to which the legislative authority of the Legislative Assembly of the Territories extends. 2. "Registrar" shall mean Registrar of Joint Stock Companies and shall include a deputy registrar and an acting registrar. 3. "Charter" shall mean the Statute, Ordinance, or other provision of law by or under which a foreign company is incorporated and any amendments thereto applying to such company or the memorandum of association or agreement or deed of settlement of the company or the letters patent or charter of incorporation or the license or certificate or registration of the company as the case may be. 4. "Charter and regulations" shall mean the charter and the articles of association and all by-laws, rules, and regulations of the company. 5. "Court" shall mean the Supreme Court of the Northwest Territories. 5. "Judge" shall mean judge of the said Court.

1903, 1st session, c. 14, § 2.

**Foreign company to become registered.** 3. Unless otherwise provided by any Ordinance no foreign company having gain for its object or a part of its object shall carry on any part of its business in the Territories, unless it is duly registered under this Ordinance. 2. Any unregistered foreign company carrying on business and any company, firm, broker, or other person carrying on business as a representative or on behalf of such unregistered foreign company shall be liable on summary conviction to a penalty of \$ 50 for every day on which such business is carried on in contravention of this section and proof of compliance with the provisions of this section shall at all times be upon the accused. 3. The taking orders by travellers for goods, wares, or merchandise to be subsequently imported into the Territories to fill such orders or the buying or selling of such goods, wares, or merchandise by correspondence if the company has no resident agent or representative and no warehouse, office, or place of business in the Territories the onus of proving which shall in any prosecution under this section rest on the accused shall not be deemed to be carrying on business under the meaning of this Ordinance.

1903, 2d session, c. 19, § 1. A company held to be carrying on business in the Province. — *Semi-Ready Ltd. v. Hawthorne*, (1909), 2 Alb. 201.

**Rights of companies when registered.** 4. Any foreign company described in Schedule B hereto may become registered on compliance with the provisions of this Ordinance, and on payment to the Registrar of the fees set out in Schedule A hereto, and shall, subject to the provisions of its charter and regulations, and to the terms

<sup>1)</sup> N. W. T. Ords., 1903 (Sess. I.), c. 14.



of registration thereupon, have the same powers and privileges in the Province as if incorporated under the provisions of *The Companies Ordinance*.

**Powers and privileges of companies when registered. Annual fee payable. 4a.** [As amended by St. 1909, c. 4, § 5.] Any other foreign company may become registered on compliance with the provisions of this Ordinance, and shall, subject to the provisions of its charter and regulations, and to the terms of registration thereupon, have the same powers and privileges in the Province as if incorporated under the provisions of *The Companies Ordinance*. 2. All other foreign companies save those described in Schedule B hereto shall pay to the Registrar an annual fee of fifty dollars during the continuance of their registrations respectively under this Ordinance, such fee to be payable on the first day of January in each year; but in the event of such a foreign company becoming registered after the first day of January in any year, the amount payable to the Registrar for such portion of the first year during which it is so registered shall be a proportionate part only of the amount required for one year, and such proportionate part shall be so payable upon the registration of the company.

Provided, however, that any foreign company, whether described in Schedule B hereto or not may become registered as aforesaid on payment to the Registrar of the fees set out in Schedule A hereto, and upon so doing the provisions of this subsection shall not apply to such foreign company.

**Procedure to obtain registration. 5.** Before the registration of any foreign company the company shall file in the office of the Registrar: a) A true copy of the charter and regulations of the company verified in manner satisfactory to the Registrar; b) An affidavit or statutory declaration that the company is still in existence and legally authorized to transact business under its charter; c) A copy of the last balance sheet of the company or a statement containing the information required to be given in the annual statement made under the provisions of section 8; d) A duly executed power of attorney under its common seal approved by the Registrar empowering some person therein named and residing in the Territories to act as its attorney for the purpose of accepting service of process in all suits and proceedings against the company within the Territories and of receiving all lawful notices and declaring that service of process in respect of such suits and proceedings and of such notices on the said attorney shall be legal and binding to all intents and purposes whatever and waiving all claims of error by reason of such service; and such company may from time to time by a new or other power of attorney executed and deposited as aforesaid appoint another attorney within the Territories for the purposes aforesaid, to replace the attorney formerly appointed.

1903, 1st session, c. 14, § 5.

**Certificate of registration. 6.** Upon compliance by any foreign company with the terms of this Ordinance the Registrar shall register such company and issue a certificate of registration; and such certificate of registration shall be conclusive evidence that all the requirements of this Ordinance preliminary to the issue thereof have been complied with. 2. Such certificate of registration shall be published by the Registrar at the expense of the company in the *Official Gazette*.

1903, 1st session, c. 14, § 6.

**Evidence of registration. 7.** The certificate of registration or any copy thereof certified under the hand and seal of the Registrar or a copy of the *Gazette* containing such certificate of registration shall be prima facie evidence of the due registration of the company as aforesaid.

1903, 1st session, c. 14, § 7.

**Annual statement. 8.** A company registered under this Ordinance shall on or before the first of March in each year during the continuance of such registration make a statement to the Registrar verified by affidavit containing as of the thirty-first day of December preceding a summary of the following particulars: a) The corporate name of the company; b) The place where the head office of the company is situated; c) The place or places where or from which the undertaking of the company is carried on; d) The name, residence, and post office address of the president, the secretary, and the treasurer of the company; e) The name, residence, and post office address of each of the directors of the company; f) The date upon which the last annual meeting of the company was held; g) The amount of the capital of the company and the number of shares into which it is divided; h) The number of shares subscribed for and allotted; i) The amount of stock, if any, issued free from call;

if none is so issued the fact is to be stated; j) The amount issued subject to call; k) The number of calls made on each share; l) The total amount of calls received; m) The total amount of calls unpaid; n) The total amount of shares forfeited; o) The total amount of shares which have never been allotted or subscribed for; p) The total amount for which shareholders of the company are liable in respect of the unpaid stock held by them; q) In a concise form such further information respecting the affairs of the company as the directors may consider expedient. 2. The summary in the next preceding subsection mentioned shall be verified by the affidavit of the president and secretary; or if there is no president or he is unable to make the same by the affidavit of the secretary and one of the directors; or if there is no secretary or he is unable to make such affidavit by the affidavit of the president and one of the directors; or if there is neither a president nor secretary or they are both unable to make such affidavit by the affidavit of two of the directors; and if the president or secretary does not make or join in the affidavit the reason therefor shall be stated in the substituted affidavit. 3. The filing with the Registrar of an annual return in the form and at the time and verified in the manner required by the provisions of sections 19 and 20 of *The Insurance Act* being chapter 124 of the Revised Statutes of Canada shall relieve any company licensed under the said Act from compliance with the provisions of subsections 1. and 2. of this section. 4. The Registrar may at any time require the company to supply such further and other information as shall seem to him to be reasonable and proper. 5. Any company making default in complying with the provisions of this section shall be liable on summary conviction to a penalty of \$20 for each and every day during which default continues; and every director, manager, secretary, agent, traveller, or salesman of such company who transacts within the Territories any business whatever for such company shall be liable on summary conviction to a penalty of \$20 for each day upon which he so transacts such business. 6. The statement or return required by this section shall be accompanied with the fee of \$5.

1903, 1st session, c. 14, § 8.

**Substituted service.** 9. If the power of attorney hereinbefore prescribed becomes invalid or ineffectual for any reason or if other service can not be effected the Court or judge may order substitutional service of any process, proceeding, notice, or document upon the company to be made by such publication as is deemed requisite to be made in the premises for at least three weeks in at least one newspaper; and such publication shall be held to be due service upon the company of such process, proceeding, notice, or document.

1903, 1st session, c. 14, § 9.

**No right of action by unregistered company.** 10. Any foreign company required by this Ordinance to become registered shall not while unregistered be capable of maintaining any action or other proceeding in any court in respect of any contract made in whole or in part in the Territories in the course of or in connection with business carried on without registration contrary to the provisions of section 3 hereof. 2. In any action or proceeding the burden of showing that it is registered shall be upon the company.

1903, 1st session, c. 14, § 10.

**Rights of registered company to sue, hold lands, etc.** 11. Any foreign company registered under this Ordinance may sue and be sued in its corporate name; and if not prohibited from so doing by its charter and regulations may acquire and hold lands in the Territories by gift, purchase, or as mortgagees or otherwise as fully and freely as private individuals; and may sell, lease, mortgage, or otherwise alienate the same.

1903, 1st session, c. 14, § 11.

**Rights and duties of registered companies.** 12. Every foreign company registered as a company under this Ordinance shall subject to the provisions of its charter and regulations and of this Ordinance have and may exercise all the rights, powers and privileges by *The Companies Ordinance* granted to and conferred upon companies incorporated thereunder; and every such foreign company and the directors, officers, and members thereof shall be subject to and shall, subject as aforesaid, observe, carry out, and perform every act, matter, obligation, and duty by *The Companies Ordinance* prescribed and imposed upon companies incorporated thereunder or upon the directors, officers, and members thereof.

1903, 1st session, c. 14, § 12.



**No municipal license fee. 13.** No license fee shall be imposed by any municipal council upon any company registered under this Ordinance.

1903, 1st session, c. 14, § 13.

**Foreign company already licensed not required to refile. 14.** Notwithstanding anything heretofore contained in this Ordinance any foreign company holding a license to carry on business in the Territories under the provisions of any Ordinance in that behalf shall upon surrendering such license to the Registrar be entitled to be registered under this Ordinance without compliance with any further provisions hereof.

1903, 1st session, c. 14, § 14.

**Lieutenant-Governor's power to suspend or revoke registration. 15.** The Lieutenant-Governor in Council may by Order in Council notice of which shall be published in the *Gazette* suspend or revoke the registration of any foreign company which refuses or fails to keep a duly appointed attorney within the Territories or to comply with any provision of this Ordinance; and notwithstanding such suspension or revocation the rights of creditors of the company shall remain as at the time of such suspension or revocation. 2. The Lieutenant-Governor in Council may likewise by order notice of which shall be published in the *Official Gazette* remove any such suspension or cancel any such revocation and restore any registration so suspended or revoked.

1903, 1st session, c. 14, § 15.

#### *Forms.*

**Lieutenant-Governor may alter forms. 16.** The Lieutenant-Governor in Council may prescribe and from time to time alter forms of certificates, powers of attorney, applications, statements, returns, and other documents relating to applications and other proceedings under this Ordinance.

1903, 1st session, c. 14, § 16.

**Ordinance not to apply to Hudson's Bay Co. 17.** [As amended by St. 1909, c. 4, § 5.] This Ordinance shall not apply to the corporation known as "The Governor and Company of Adventurers of England trading into Hudson's Bay," nor to any telegraph company or companies incorporated by or under the authority of the Parliament of Canada and operated in connection with a line or lines of railway constructed or operated under the authority of an Act of the Parliament of Canada.

#### *Schedule A.*

[As added by St. 1907, c. 5, § 15.]

##### *Fees Payable on Registration.*

For companies with capitalization not exceeding *100,000 . . . . .	* 75.00
Exceeding *100,000 but not exceeding *200,000 . . . . .	* 125.00
Exceeding *200,000 but not exceeding *500,000 . . . . .	* 300.00
Exceeding *500,000 but not exceeding *1,000,000 . . . . .	* 450.00
Exceeding *1,000,000 but not exceeding *3,000,000 . . . . .	* 500.00
For every additional *1,000,000 or fractional part thereof over *3,000,000, an additional sum of *100.00.	

#### *Schedule B.*

[As added by St. 1908, c. 20, § 4.]

The following companies shall, upon applying to the Registrar for registration, be liable for the payment of the fees as prescribed in Schedule A hereto: fire and life insurance companies, but not including mutual insurance companies, accident insurance companies, express companies, telephone companies, telegraph companies, trust companies, loan companies, building companies, contracting companies, land companies, ranching companies, gas companies, oil companies, coal companies, implement companies.

## Sale of Goods.

### Cons. Ords., 1905, c. 39. An Ordinance respecting the Sale of Goods.<sup>1)</sup>

#### Short title.

**Short title.** 1. This Ordinance may be cited as *The Sale of Goods Ordinance* [2—58. Are identical in all material respects with the Imperial *Sale of Goods Act*, 1893 (56 & 57 Vic. c. 71), §§ 1—62. There is no market overt in Alberta. Contracts for the sale of goods over \$ 50 must be in writing.]

Memorandum in writing required by § 4 must embody all the terms of the contract. Where goods are sold on credit the term must be set forth. — *Calder v. Nallett* (1900), 5 Terr. L. R. 1. In the absence of evidence indicating a different intention, the words "F. O. B." any particular place mean that the goods must arrive there before delivery is complete. — *Stephens Bros. v. Burch*, (1908), 2 Alb. 68. Where there was an agreement to sell goods at certain price, F. O. B. Leduc, "delivery to be made a reasonable time after the 22d of October," and on the 26th October the buyer wrote that he did not intend to carry on the contract, the measure of damages for the buyer's failure to accept was the difference between the market price at Leduc on 26th October, and the contract price. — *Rex Fruit Co. v. Anderson*, (1909), 2 Alb. 361. The rule caveat emptor only protects the seller against damages resulting to him by decrease in the actual value of the goods sold. But the rule does not extend to collateral damage to the buyer occasioned by a defect in the article sold, and known to the seller. — *Urch & Patterson v. Strathcona Horse Repository*, (1909), 2 Alb. 83. Where there is a sale of a specific chattel and there is no evidence that the vendor did not intend to assert ownership, there is an implied warranty of title. — *Dickie v. Dunn*, (1887), 1 Terr. L. R. 83. Unless the buyer has notice of some defect in the seller's title. In such case there is no warranty of title as against such defect. — *Terriff v. McHugh*, (1889), 1 Terr. L. R. 186. Mere expressions of commendation are not representations or warranties. The implied warranty of fitness under § 16 (1) does not apply where the seller is not a regular dealer in the class of goods sold, and *semble*, not to second-hand goods. — *Robertson v. Morris*, (1908), 1 Alb. 493. Where a contract for the sale of machinery provided that "the above description is for the purpose of identification only and the buyer expressly agrees that such machinery is not sold by description, and that there are no conditions or warranty, either general, expressed, or implied, other than the conditions and warranty set forth below," it was held that this clause was an express agreement under § 53, negating the conditions implied under § 16, that the goods were reasonably fit for the special purpose for which they were purchased. *Stuart, J.*, dissented on the ground that the words "express agreement" as used in § 53 mean "an agreement which explicitly and in direct terms, and not by means of an inference or logical syllogism, however obvious, declares that a particular obligation implied by law, specifying what that obligation is, shall not apply to the sale in question." — *Reeves v. Chase*, (1909), 2 Alb. 133, reversing s. c., (1908), 1 Alb. 274. On a contract containing a provision that the machinery was sold "upon and subject to the following mutual and independent conditions," and one condition was that "it was warranted to be made of good material and durable, with good care and with proper usage to do as good work as any of the same size sold in Canada," and that written notice must be given to the seller if the machinery did not satisfy the warranty, and that "there are no other warranties or guaranties, promises or agreements, than those contained herein," it was held that nevertheless, there was an implied condition under § 16 (1) as to reasonable fitness for the purpose for which the article was bought. — *Sawyer-Massey Co. v. Ritchie*, (1910), 13 West. L. R. 89. The evidence showed that the plaintiff and defendant drove to plaintiff's ranch, and saw the plaintiff's bunch of horses, and that the defendant stated that he would purchase, and specified the horses that were not suitable for his purposes, which were thereupon marked and separated from the others. The defendant gave the plaintiff three dollars with which to purchase oats to feed the horses, and also bought and gave the plaintiff rope with which to make halters for the horses. The horses never left the possession of the plaintiff. Held, not a sufficient receipt so as to make a contract binding under § 4. — *Livingstone v. Colpitts*, (1900), 4 Terr. L. R. 441.

## Factors.

### Cons. Ords., 1905, c. 40. An Ordinance respecting Factors and Agents.<sup>2)</sup>

#### Short title.

**Short title.** 1. This Ordinance may be cited as *The Factor's Ordinance*. [2—14. Are identical in all material respects with the Imperial *Factors Act*, 1889 (52 & 53 Vic. c. 45), §§ 1—13.]

<sup>1)</sup> N. W. T. Cons. Ords., 1898, c. 39. <sup>2)</sup> N. W. T. Cons. Ords., 1898, c. 40.



## Public Holidays.

### Cons. Ords., 1905, c. 1. An Ordinance respecting the Form and Interpretation of Ordinances.<sup>1)</sup>

**Interpretation.** 8. (16). [As amended by St. 1910 (Sess. II.) c. 2, § 11.]

19. The expression "holiday" includes Sunday, New Year's Day, Ash Wednesday, Good Friday, Easter Monday, the twenty-fourth day of May or when such day falls on a Sunday the twenty-fifth day of May to be known as Victoria Day, Christmas Day, the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning Sovereign, Dominion Day, Labour Day, Arbour Day being the second Friday in May or in lieu thereof such other day as may in each year be proclaimed a public holiday for the planting of forest and other trees, and any other day appointed by proclamation for a general feast or thanksgiving.

## Insolvency.

### a) St. 1907, c. 6. An Act respecting Assignments and Preferences by Insolvent Persons (15th March, 1907).

#### *Short title.*

**Short title.** 1. This Act may be cited as *The Assignments Act*.

#### *Official assignees.*

**Appointment of official assignees.** 2. The Lieutenant-Governor in Council may appoint one person in each judicial district of this Province to be an official assignee under this Act.

**Security to be given by official assignee.** 3. No official assignee shall accept any assignment or trust or execute any duties under this Act unless and until he has given security to the satisfaction of the Lieutenant-Governor in Council by bond or bonds or otherwise to His Majesty, his heirs and successors, in the sum of ten thousand dollars for the due accounting and payment over of all moneys received by him as such assignee.

**Expense of furnishing bond.** 4. An official assignee may charge up to each estate which comes into his hands the sum of five dollars to reimburse himself the expense incident to the furnishing of said bonds.

#### *Assignments.*

**General assignment not in accordance with Act when void.** 5. [As amended by St. 1909, c. 4, § 14.] Subject to the provisions of section forty-two hereof every assignment for the general benefit of creditors which is not void under any of the sections of this Act numbered from thirty-nine to forty-three inclusive of both such numbers shall be absolutely null and void to all intents and purposes unless such assignment is made: 1. to an official assignee; or 2. to some other person resident in the Province with the consent (in writing or by telegram written or sent prior to the date of assignment) of a majority of the creditors mentioned in the statutory declaration hereinafter provided to be annexed to such assignment having claims of one hundred dollars and upwards computed according to the provisions of section twenty-two of this Act.

**Form of assignment for general benefit of creditors.** 6. [As amended by St. 1909, c. 4, § 14.] Every assignment made under this Act for the general benefit of creditors shall as to the description of the property comprised therein be valid and sufficient if such description is in the words following, that is to say: "All my personal property and all my real estate, credits, and effects which may be seized and sold under execution," or if it is in words to the like effect; and an assignment so expressed shall vest in the assignee all the real and personal estate, rights, property, credits, and effects whether vested or contingent belonging at the time of the assign-

<sup>1)</sup> N. W. T. Cons. Ords., 1898, c. 1.

ment to the assignor except such as are by law exempt from seizure or sale under execution or other legal proceedings, subject, however, as regards lands to the provisions of *The Land Titles Act*. 2. There shall be annexed to every assignment made to some person other than an official assignee a statutory declaration by the assignor setting forth to the best of his knowledge, information, or belief the names of all his creditors and the amounts of their respective claims.

**All assignments for general benefit of creditors to be subject to this Act.** 7. Every assignment hereafter executed in accordance with this Act for the general benefit of creditors whether the assignment is or is not expressed to be made under or in pursuance of this Act and whether the debtor has or has not included all his real and personal estate shall vest the estate whether real or personal or partly real and partly personal thereby assigned in the assignee therein named for the general benefit of creditors; and such assignment and the property thereby assigned shall be subject to all the provisions of this Act and the provisions of this Act shall apply to the assignee named in such assignment.

**Assignments to take precedence of judgments, executions, etc.** 8. An assignment for the general benefit of creditors under this Act shall take precedence of all attachments of debts by way of garnishment where the money has not been actually paid over to the garnishing creditor as well as of all other attachments and of all judgments and of all executions not completely executed by payment, subject to the lien, if any, of execution or attaching creditors for their costs.

**Sheriff to hand over property seized.** 9. In case a deed of assignment as aforesaid has been duly executed and registered the sheriff having seized property of the assignor under execution or attachment shall upon receiving a copy of the assignment duly certified by the clerk of the registration district for mortgages and other transfers of personal property in whose office it is registered or verified by affidavit forthwith deliver to the assignee all the estate and effects of the execution debtor in his hands upon payment by the assignee to the sheriff of his fees and charges and the costs of the execution creditor or creditors who has or have a lien as above provided.

**Amendment of assignment by judge.** 10. No advantage shall be taken or gained by any creditor of any mistake, defect, or imperfection in any assignment under this Act for the general benefit of creditors if the same can be amended or corrected; and any such mistake, defect, or imperfection shall be amended by any Judge; such amendment may be made on application of the assignee or of any creditor of the assignor on such notice being given to other parties concerned as the Judge shall think reasonable; and the amendment when made shall have relation back to the date of the assignment, but so as not to prejudice the rights of innocent purchasers.

**Notice of assignment to be published.** 11. No assignment made for the general benefit of creditors under this Act shall be within the operation of *The Bills of Sale Ordinance*, but a notice of the assignment shall as soon as conveniently possible be published at least once in *The Alberta Gazette* and not less than twice in at least one newspaper having a general circulation in the judicial district in which the property assigned is situate.

**Assignment to be registered.** 12. A duplicate original or copy of every such assignment shall also within ten days from the execution thereof be registered (together with an affidavit of a witness thereto of the due execution of such duplicate original or of the assignment of which the copy filed purports to be a copy) in the office of the clerk of the registration district for mortgages and other transfers of personal property, where the assignor if a resident in Alberta resides at the time of the execution thereof, or if he is not a resident then in the office of the clerk of the said registration district where the personal property so assigned is or where the principal part thereof (in case the assignment includes property in more registration districts than one) is at the time of the execution of such assignment; and such clerks shall file all such instruments presented to them respectively for that purpose, and shall indorse thereon the time of receiving the same in their respective offices and the same shall be kept there for the inspection of all persons interested therein. The said clerks respectively shall number and enter such assignments and be entitled to the same fees for services in the same manner as if such assignments had been registered under *The Bills of Sale Ordinance*. 2. A duplicate original or copy certified by the clerk of the Court shall within fifteen days also be filed in the land titles office for the land registration district in which any land vested by this Act in the assignee is situated.



**Penalty for neglecting publication or registration. Liability of official assignee.**

13. If the said notice is not published in the regular number of *The Alberta Gazette*, and in such newspaper as aforesaid within ten days from the execution of the assignment by the assignor or if the assignment is not registered as aforesaid within ten days from the execution thereof the assignor shall be liable to a penalty of twenty-five dollars for each and every day that shall pass after the issue of the number of the newspaper in which the notice should have appeared until the same shall have been published; and a like penalty for each and every day which shall pass after the expiration of ten days from the execution of the assignment by the assignor until the same shall have been registered: a) The assignee shall be subject to a like penalty for any such delay for each and every day which shall pass after the expiration of ten days from the delivery of the assignment to him or of ten days after his assent thereto. The burden of proving the time of such delivery or assent shall be upon the assignee; b) Such penalties may be recovered with costs by action in the Court having jurisdiction to the amount of any penalty sought to be recovered and one-half of the penalty shall go to the party suing and the other half for the benefit of the estate of the assignor; c) In case of an assignment to an official assignee he shall not be liable for any of the penalties imposed in this section unless he has been paid or tendered the cost of advertising and registering the assignment a reasonable time before the time required for so advertising and registering nor shall he be compelled to act under the assignment until his costs in that behalf are paid or tendered to him.

**Compelling publication and registration.** 14. In case the assignment is not registered and notice thereof published within the time hereinbefore prescribed an application may be made by any one interested in the assignment to a judge to compel the registration of the assignment and publication of such notice: and the judge shall make his order in that behalf and with or without costs or upon the payment of costs by such person as he may in his discretion direct to pay the same.

**Assignment not invalidated by omission to publish, etc.** 15. The omission to publish or register as aforesaid or any irregularity in the publication or registration shall not invalidate the assignment.

*Creditors' assignee.*

**Appointment of substituted assignee.** 16. A majority in number and value of the creditors who have proved claims to the amount of one hundred dollars or upwards may at their discretion substitute some other person resident within the Province for an assignee to whom an assignment has been made and in case an assignee has died a new assignee may in a like manner be appointed by the creditors: 2. An assignee may be removed and another substituted or a new assignee appointed by order of the Court upon application for that purpose.

**Rights and duties of the substituted assignee.** 17. Where a new assignee is substituted or appointed as in the last preceding section provided the estate shall forthwith vest in the new assignee without a conveyance or transfer, and he shall register an affidavit of his appointment in the office in which the original assignment was filed; such an affidavit may also be filed under *The Land Titles Act*, and such registration or filing shall have the same effect as the registration of a conveyance or transfer.

*Meetings of creditors.*

**Assignee to call meeting of creditors.** 18. It shall be the duty of the assignee immediately to inform himself by reference to the debtor and his records of account of the names and residences of the debtor's creditors and within five days from the date of assignment to convene a meeting of the creditors for the appointment of inspectors and the giving of directions with reference to the disposal of the estate by mailing prepaid and registered to every creditor known to him a circular calling a meeting of creditors to be held in his office or some other convenient place to be named in the notices not later than twelve days after the mailing of such notice; and he shall also publish such notice by advertisement in *The Alberta Gazette* in the first issue after the expiration of such period of five days.

**Meeting of creditors by request of majority thereof.** 19. In case of a request in writing signed by a majority of the creditors having claims duly proved of one hundred dollars and upwards computed according to the provisions of the twenty-second section of this Act, it shall be the duty of the assignee within two days after

receiving such request to call a meeting of the creditors at a time not later than twelve days after the assignee receives the request. In case of default the assignee shall be liable to a penalty of twenty-five dollars for every day after the expiration of the time limited for the calling of the meeting until the meeting is called.

**Judge to give directions in case creditors do not attend. 20.** In case a sufficient number of creditors do not attend the meeting mentioned in the last preceding section, or fail to give directions with reference to the disposal of the estate any judge may give all necessary directions in that behalf.

**Voting at meeting. 21.** At any meeting of creditors the creditors may vote in person or by proxy authorized in writing; but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim stating the amount and nature thereof.

**Scale of vote. Upon claims acquired after assignment. Casting vote. 22.** Subject to the provisions of the sixteenth and twentieth sections hereof all questions discussed at meetings of creditors shall be decided by the majority of votes and for such purpose the votes of creditors shall be calculated as follows:

For every claim of or over one hundred dollars and less than two hundred dollars, one vote;

For every claim of or over two hundred dollars and less than five hundred dollars, two votes;

For every claim of or over five hundred dollars and less than one thousand dollars, three votes;

For every additional one thousand dollars or fraction thereof, one vote: a) No person shall be entitled to vote on a claim acquired after the assignment unless the entire claim is acquired, but this shall not apply to persons acquiring notes, bills or other securities upon which they are liable: b) In case of a tie the assignee shall have a casting vote.

#### *Creditors' claims.*

**Proof of claim. 23.** Every person claiming to be entitled to rank on the estate assigned shall furnish to the assignee particulars of his claim proved by affidavit and such vouchers as the nature of the case admits of.

**Limiting time for proof of claim. 24.** In case a person claiming to be entitled to rank on the estate assigned does not within a reasonable time after receiving notice of the assignment and of the name and address of the assignee furnish to the assignee satisfactory proofs of his claim as provided by this and the preceding sections of this Act, a Judge may upon a summary application by the assignee or by any other person interested in the debtor's estate (of which application at least three days' notice shall be given to the person alleged to have made default in proving a claim as aforesaid), order that unless the claim be proved to the satisfaction of the Judge within a time to be limited by the order the person so making default shall no longer be deemed a creditor of the estate assigned and shall be wholly barred of any right to share in the proceeds thereof; and if the claim is not so proved within the time so limited or within such further time as the said Judge may by subsequent order allow, the same shall be wholly barred and the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the debtor therefor.

**Creditor may prove claim not due. 25.** A person whose claim has not accrued due shall nevertheless be entitled to prove under the assignment and vote at meetings of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time which has to run until the claim becomes due.

**Set-off. 26.** The law of set-off shall apply to all claims made against the estate and also to all actions instituted by the assignee for the recovery of debts due to the assignor in the same manner and to the same extent as if the assignor were plaintiff or defendant as the case may be.

**How claims are to rank where different estates. 27.** If any assignee or assignors executing an assignment under this Act for the general benefit of his or their creditors owes or owe debts both individually and as a member of different co-partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted and shall only rank upon the other or others after all the creditors of such other estate or estates have been paid in full.



**Workmen's wages not exceeding three months privileged claims under assignment for benefit of creditors. Provisions applicable to all wages. When wages to be payable on distribution of estate by assignee, administrator, etc.** 28. In case of an assignment under this Act the assignee shall pay in priority to the claims of the ordinary or general creditors of the person making the same the wages or salary of all persons in the employ of such person at the time of the making of such assignment or within one month before the making thereof, not exceeding three months' wages or salary, such wages or salary to be for arrears only and not for any unearned portion; and such persons shall be entitled to rank as ordinary or general creditors for the residue, if any, of their claims for arrears of such wages or salary; the provisions of this section shall apply to wages or salary whether the employment in respect of which the same may be payable by the day, week, month, or year. 2. The wages in respect of which priority is herein conferred shall become due and be payable by the assignee within one month from the time when the estate which is being wound up or distributed shall have been received by or placed under the control of such assignee unless it shall appear to him that the said estate is not of sufficient value to pay the ordinary expenses and disbursements of winding-up and distributing the said estate; but such ordinary expenses shall not include the cost of litigation or other unusual expenses concerning the estate or any part thereof, unless the persons entitled to the said preferential claim for wages shall have consented in writing to such proceedings being taken before they were commenced or shall afterwards have adopted or ratified in writing such proceedings.

**Creditors to value securities.** 29. Every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof; and if such security is on the estate of the debtor or on the estate of a third party for whom such debtor is only secondarily liable he shall put a specified value thereon; and the assignee under the authority of the creditors may either consent to the right of the creditor to rank for the claim after deducting such valuation or he may require from the creditor an assignment of the security at an advance of ten per cent. upon the specified value to be paid out of the estate; and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect of the estate.

**Right to revalue in certain cases.** 30. If a creditor holds a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of the last preceding section, and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof; but after the maturity of such liability and its non-payment he shall be entitled to amend and revalue his claim.

**When creditor holding security fails to value the same.** 31. In case a person claiming to be entitled to rank on the estate assigned holds security for his claim or any part thereof of such nature that he is required by this Act to value the same and he fails to value such security a Judge may upon summary application by the assignee or by any other person interested in the debtor's estate of which application three days' notice shall be given to such claimant order that unless a specified value shall be placed on such security and notified in writing to the assignee within a time to be limited by the order such claimant shall in respect of the claim or the part thereof for which the security is held for part only of the claim be wholly barred of any right to share in the proceeds of such estate; and if a specified value is not placed on such security and notified in writing to the assignee according to the exigency of the said order or within such further time as the said Judge may by subsequent order allow the said claim or the said part as the case may be shall be wholly barred as against such estate but without prejudice to the liability of the debtor therefor.

**Contestation of claim. Service of process on solicitors.** 32. At any time after the assignee receives from any person claiming to be entitled to rank on the estate proof of his claim, notice of the contestation of the claim, or of any part thereof, may be served by the assignee upon the claimant; within thirty days after the receipt of the notice, or such further time as a Judge may on application allow, the claimant shall apply for and may if a Judge sees fit obtain an originating summons to decide the validity of such claim under the practice regarding originating

proceedings set forth in *The Judicature Ordinance* or of any Act hereafter passed or Rules of Court hereafter promulgated by competent authority in substitution for or amendment of *The Judicature Ordinance* or of the Rules of Court therein contained, and such summons shall be served on the assignee; and in default of such summons being served within the time aforesaid the claim or such part thereof as has been so contested shall be forever barred: a) The notice by the assignee shall contain the name and place of business of a solicitor upon whom service of the summons may be made; and service upon such solicitor shall be deemed sufficient service of the summons.

**Procedure where assignee is satisfied with proof of claim and debtor desires to dispute same.** 33. In case the assignee is satisfied with the proof adduced in support of a claim he shall notify the debtor of his decision with regard thereto within a reasonable time after coming to such decision, and if the debtor desires to dispute the claim or any part thereof, he shall notify the assignee in writing stating his grounds of dispute; and such notice shall be given within ten days of such debtor being notified in writing by the assignee that he is satisfied with the proof adduced as aforesaid and not afterwards unless by special leave of a Judge: a) If upon receiving such notice of dispute the assignee does not deem it proper to require the claimant to take proceedings to establish his claim he shall notify the debtor in writing of this fact and the debtor may thereupon and within ten days of his receiving such notice apply to a Judge for an order requiring the assignee to serve a notice of contestation; the Judge shall only make such order if after notice to the assignee the Judge is of the opinion that there are good grounds for contesting the claim; in case the debtor does not make an application as aforesaid, the decision of the assignee shall as against him be final and conclusive; b) If proceedings are brought by the claimant against the assignee the debtor may intervene either personally or by counsel for the purpose of contesting the claim.

#### *Dividends.*

**Dividends when to be paid.** 34. As large a dividend as can with safety be paid shall be paid by every assignee under this Act within six months from the date of any assignment made hereunder and earlier if required by the inspectors; and thereafter a further dividend shall be paid every six months and more frequently if required by the inspectors, until the estate is wound up and disposed of.

**Notice of dividend sheet.** 35. So soon as a dividend sheet is prepared, notice thereof shall be given by letter posted to each creditor enclosing an abstract of receipts and disbursements, showing what interest has been received by the assignee for moneys in his hands, together with a copy of the dividend sheet noting thereon the claims objected to, and stating whether any reservation has or has not been made therefor; and after the expiry of eight days from the day of mailing such notice, abstract, and dividend sheet as aforesaid, dividends on all claims not objected to within that period shall be paid.

#### *Administration of estate.*

**Assets not to be removed out of the Province, and moneys to be deposited in a bank. Penalty.** 36. No property or assets of an estate assigned under the provisions of this Act shall be removed out of the Province without the order of a Judge; and the proceeds of the sale of any such property or assets and all moneys received on account of any estate shall be deposited by the assignee in one of the incorporated banks within this Province, and shall not be withdrawn or removed without the order of a Judge except in payment of dividends and other charges incidental to the winding-up of the estate, which shall include rent, wages, mortgages, secured and preferred and partly secured and preferred claims: a) Any assignee or other person acting in his stead or on his behalf violating the provisions of this section shall be liable to a penalty of five hundred dollars, which may be recovered summarily with costs before the court, and one-half of the said penalty shall go to the person suing therefor and the other half shall belong to the said estate; but in default of payment of the said penalty and all costs which may be incurred in any action or proceeding for the recovery thereof, such assignee or other person may be imprisoned for any period not exceeding thirty days, and shall be disqualified from acting as assignee of any estate while such default continues.



**Accounts to be kept accessible. 37.** Upon the expiration of one month from the first meeting of creditors, or as soon as may be after the expiration of such period, and afterwards from time to time at intervals of not more than three months, the assignee shall prepare and keep constantly accessible to the creditors accounts and statements of his doings as such assignee and of the position of the estate.

*Fraudulent or preferential transfers.*

**Confessions or warrants to confess judgment given by insolvents to defeat or delay creditors or to give one preference over the other to be void. 38.** In case any person, being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntarily or by collusion with a creditor or creditors, gives a confession of judgment, cognovit actionem or warrant of attorney to confess judgment with intent, in giving such confession, cognovit actionem, or warrant of attorney to confess judgment, to defeat or delay his creditors wholly or in part or with intent thereby to give one or more of the creditors of any such person a preference over his other creditors, or over any one or more of such creditors, every such confession, cognovit actionem, or warrant of attorney to confess judgment shall be deemed and taken to be null and void as against the creditors of the party giving the same, and shall be invalid and ineffectual to support any judgment or writ of execution.

**Gifts, transfers, etc., made by insolvents which defeat or prejudice creditors to be void. 39.** Subject to the provisions of the forty-fifth, forty-sixth, forty-seventh, and forty-eighth sections of this Act every gift, conveyance, assignment, or transfer, delivery over or payment of goods, chattels, or effects or of bills, bonds, or securities or of shares, dividends, premiums, or bonus in any bank, company, or corporation or of any other property real or personal made by a person at a time when he is in insolvent circumstances or is unable to pay his debts in full or knows that he is on the eve of insolvency with intent to defeat, hinder, delay, or prejudice his creditors or any one or more of them, shall, as against the creditor or creditors injured, delayed, or prejudiced, be utterly void.

**Transfers with intent to prefer creditors. 40.** Subject to the provisions of the forty-fifth, forty-sixth, forty-seventh, and forty-eighth sections of this Act every gift, conveyance, assignment, or transfer, delivery over or payment of goods, chattels, or effects or of bills, bonds, notes, or securities, or of shares, dividends, premiums, or bonus in any bank, company, or corporation or of any other property real or personal made by a person at a time when he is in insolvent circumstances or is unable to pay his debts in full or knows that he is on the eve of insolvency to or for a creditor with intent to give such creditor preference over his other creditors or over any one or more of them, shall, as against the creditor or creditors injured, delayed, prejudiced, or postponed, be utterly void.

Conveyance set aside as fraudulent. — *Smith v. Sugarman* (1909), 2 Alb. 442; affirmed by Supreme Court of Canada (1910).

**Transfers having effect of preference void if attacked within sixty days. 41.** Subject to the provisions of the forty-fifth, forty-sixth, forty-seventh, and forty-eighth sections of this Act every gift, conveyance, assignment, or transfer, delivery over or payment of goods, chattels, or effects or of bills, bonds, notes, or securities or of shares, dividends, premiums, or bonus in any bank, company, or corporation or of any other property real or personal, made to or for a creditor by a person at any time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, and which has the effect of giving such creditor a preference over the other creditors of the debtor, or over any one or more of them, shall, in and with respect to any action or proceeding which within sixty days thereafter is brought, had or taken to impeach or set aside such transaction, be utterly void as against the creditor or creditors injured, delayed, prejudiced, or postponed.

**Or if assignment made within sixty days. 42.** [As amended by St. 1909, c. 4, § 14.] Subject to the provisions of the forty-fifth, forty-sixth, forty-seventh, and forty-eighth sections of this Act every gift, conveyance, assignment, or transfer, delivery over or payment of goods, chattels, or effects or of bills, bonds, notes, or securities or shares, dividends, premiums, or bonus in any bank, company, or corporation or of any other property real or personal made to or for a creditor by a person at any time when he is in insolvent circumstances or is unable to pay his

debts in full, or knows that he is on the eve of insolvency, and which has the effect of giving such creditor a preference over the other creditors of the debtor or over one or more of them, shall, if the debtor within sixty days after the transaction makes an assignment for the benefit of his creditors, whether such assignment is or is not void under the provisions of this Act, be utterly void as against the assignee or any creditor authorized to take proceedings to avoid the same under the forty-ninth section hereof.

**What transactions to be deemed preferential. Intent or motive immaterial. Pressure or want of knowledge on part of creditor not to save the transaction.**

**43.** A transaction shall be deemed to be one which has the effect of giving a creditor a preference over other creditors within the meaning of the two last preceding sections if by such transaction a creditor is given, or realizes, or is placed in a position to realize payment, satisfaction, or security for the debtor's indebtedness to him or a portion thereof greater proportionately than could be realized by or for the unsecured creditors generally of such debtor or for the unsecured portion of his liabilities out of the assets of the debtor left available and subject to judgment, execution, attachment or other process; and such effect shall not be deemed dependent upon the intent or motive of the debtor or upon the transaction being entered into voluntarily or under pressure; and no pressure by a creditor or want of notice to the creditor alleged to have been so preferred of the debtor's circumstances, inability, or knowledge as aforesaid or of the effect of the transaction shall avail to protect the transaction except as provided by the forty-fifth and forty-eighth sections hereof, but independent entirely of the intent with which the transaction was entered into the preferential effect or result of the transaction impeached shall govern.

**"Creditor" for certain purposes to include surety and indorser.** **44.** When the word "creditor" or "creditors" occurs in any of the four last preceding sections, such word shall be deemed to include any surety and the indorser of any promissory note or bill of exchange who would upon payment by him of the debt, promissory note or bill of exchange in respect of which such suretyship was entered into or such indorsement was given, become a creditor of the person giving the preference within the meaning of said sections, and such word shall include a cestui que trust or other person to whom the liability is equitable only.

**Assignments for benefit of creditors and bona fide sales, etc., protected. Proviso.**

**45.** Nothing in the last six preceding sections shall apply to any assignment made to an official assignee or with the consent of a majority of the creditors having claims of one hundred dollars and upwards, computed according to the provisions of the twenty-second section of this Act to any other person resident within the Province for the purpose in each of the said cases of paying rateably and proportionately and without preference or priority all the creditors of the debtor their just debts; nor to any bona fide sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties; nor to any payment of money to a creditor nor to any bona fide conveyance, assignment, transfer, or delivery over of any goods, securities, or property of any kind as above mentioned which is made in consideration of any present actual bona fide payment in money or by way of security for any present actual bona fide advance of money or which is made in consideration of any present actual bona fide sale or delivery of goods or other property: Provided that the money paid or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration thereof.

**Transfer to creditor of consideration for sale invalid.** **46.** In case of a valid sale of goods, securities, or property and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor under circumstances which would render void such a payment or transfer by the debtor personally and directly, the payment or transfer even though valid as respects the purchaser shall be void as respects the creditor to whom the same is made.

**Security given up upon void payment to be returned.** **47.** In case a payment has been made which is void under this Act and any valuable security was given up in consideration of the payment, the creditor shall be entitled to have the security restored or its value made good to him before or as a condition of the return of the payment.

**Payment of wages protected. Exchange of securities protected. Certain assignments to be valid.** **48.** Nothing herein contained shall affect the priority of a claim



for wages or salary under the twenty-eighth section of this Act, or shall prevent a debtor providing for payment of wages or salary due by him in accordance with the provisions of the said section; nor shall anything herein contained affect any payment of money to a creditor where such creditor by reason or on account of such payment has lost or been deprived of, or has in good faith given up any valid security which he held for the payment of the debt so paid unless the value of the security is restored to the creditor nor the substitution in good faith of one security for another security for the same debt so far as the debtor's estate is not thereby lessened in value to the other creditors; nor shall anything herein contained invalidate a security given to a creditor for a pre-existing debt where by reason or on account of the giving of the security an advance in money is made to the debtor by the creditor in the bona fide belief that the advance will enable the debtor to continue his trade or business and pay his debts in full.

**Rights of action of assignee. Creditor may proceed in certain cases if assignee refuses.** 49. Except as is hereinafter otherwise provided the assignee shall have an exclusive right of suing for the rescission of agreements, deeds and instruments or other transactions made or entered into in fraud of creditors or made or entered into in violation of this Act: a) If at any time a creditor desires to cause any proceeding to be taken which in his opinion would be for the benefit of the estate, and the assignee under authority of the creditors or inspectors refuses or neglects to take such proceeding after being duly required so to do, the creditor shall have the right to obtain an order of a judge authorizing him to take the proceedings in the name of the assignee but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the judge may prescribe; and thereupon any benefit derived from the proceedings shall, to the extent of his claim and full costs, belong exclusively to the creditor instituting the same for his benefit; but if before such order is granted the assignee shall signify to the judge his readiness to institute the proceedings for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, shall belong to the estate.

**Creditors suing for rescission to void transactions for benefit of creditors generally.** 50. Where there is no valid assignment for the benefit of creditors, one or more creditors may for the benefit of creditors generally or for the benefit of such creditors as have been injured, delayed, prejudiced, or postponed by the impeached transaction, sue for the rescission of or to have declared void agreements, deeds, instruments, or other transactions made or entered into in fraud of creditors, or in violation of this Act or thereby declared void; and in case any amendment of the statement of claim be made the same shall relate back to the commencement of the action for the purpose of the time limited by the forty-first section hereof.

**Following proceeds of property fraudulently transferred. Taking proceeds under execution. Creditor suing on behalf of himself and other creditors. Protection of innocent purchasers.** 51. In the case of a gift, conveyance, assignment, or transfer of any property real or personal, which in law is invalid against creditors if the person to whom the gift, conveyance, assignment, or transfer was made, shall have sold or disposed of, realized or collected the property or any part thereof, the money or other proceeds or the amount thereof, whether further disposed of or not, may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery, or payment was made, and such right to seize and recover shall belong not only to an assignee for the general benefit of the creditors of the said debtor, but in case there is no such assignment shall exist in favour of all creditors of such debtor: a) Where there has been no valid assignment for the benefit of creditors and the proceeds are of a character to be seizable under execution, they may be seized under the execution of any creditor, and shall be distributable amongst creditors under *The Creditors' Relief Ordinance*; b) Where there has been no valid assignment for the benefit of creditors, and whether the proceeds realized as aforesaid are or are not of a character to be seized under execution, an action may be brought therefor, or to recover the amount thereof by a creditor (Whether a judgment creditor or not) on behalf of himself and all other creditors or such other proceedings may be taken as may be necessary to render the said proceeds or the amount thereof available for the general benefit of the creditors; c) This section shall not apply as against innocent purchasers of any such property.

*Examination of assignors and others.*

**Examination of assignor or employees.** 52. Where there has been an assignment for the benefit of creditors, the assignee upon resolution passed by a majority vote of the creditors present, or represented at a meeting of the creditors of the assignor, regularly called, or upon the written request or resolution of the majority of the inspectors of the estate may without an order examine the assignor or any person who is or has been an agent, clerk, servant, officer, or employee of any kind of the assignor upon oath before any person authorized to hold examination for discovery under *The Judicature Ordinance* or of any Act hereafter passed or Rules of Court hereafter promulgated by competent authority in substitution for or amendment of the Judicature Ordinance or of the Rules of Court therein contained, or appointed for the purpose by a Judge touching the estate and effects of the assignor, and as to the property and means he had when the earliest of the debts or liabilities of the assignor existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him.

**Procedure upon examination of an assignor.** 53. The rules and procedure from time to time in force in the Court for the examination of judgment debtors shall, as far as may be, apply to an examination under this Act of an assignor in all respects as if the assignor were a judgment debtor.

**When assignor does not attend or refuses to answer questions.** 54. In case such assignor does not attend as required by any appointment or appointment and order, as the case may be, served on him, and does not allege a sufficient excuse for not attending, or if attending refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or if it appears from such examination of the assignor that such assignor has concealed or made away with any part of his property in order to defeat or defraud his creditors or any of them, any Judge may on summary proceedings before him order the assignor to be committed to gaol for any term not exceeding twelve months.

**Service of appointment.** 55. Any person liable to be examined under the fifty-second section of this Act may be served with an appointment signed by the examiner mentioned in the fifty-second section of this Act or a copy thereof, and where the examination is to take place under an order, also with a copy of the order; such service to be made at least forty-eight hours before the time appointed for the examination, and the person to be examined is to be paid the same fees as a witness.

**Conduct of examination.** 56. The examination under the fifty-second section of this Act shall be conducted in the same manner as in the case of an oral examination of an opposite party in a suit or action.

**Compelling attendance and production of books.** 57. Any person liable to be examined under the fifty-second section hereof may be compelled to attend and testify and to produce books and documents in the same manner and subject to the same rules of examination and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined as in the case of a witness in an action in the Court.

**Calling upon persons having information as to assignor's affairs to give evidence and produce documents, etc.** Examination of person failing to produce documents or to deliver property. **Enforcing attendance and production.** 58. In case any person has or is believed or suspected to have in his possession or power any of the assignor's property, or any book, document, or paper of any kind relating in whole or in part to the assignor, his dealings or property, such person may upon resolution passed by a majority vote of the creditors present or represented at a regularly called meeting of the creditors of the assignor (exclusive of such person if he is a creditor) or upon the written request or resolution of the majority of the inspectors of the estate be required by the assignee to produce such books, documents, or papers for the information of such assignee or to deliver over to him any such property of the debtor: a) In case such person fails to produce the said book, document or other paper, or to deliver over such property within four days of his being served with a copy of the said resolution and a request of the assignee in that



behalf, or in case the assignee or the majority of the inspectors is not satisfied that full production or delivery has been made, the assignee may without an order examine the said person before any of the officers mentioned in the fifty-second section of this Act, touching any such property or document or other paper which he is supposed to have received; b) Any such person may be compelled to attend and testify and to produce upon his examination any book, document, or other paper which under this section he is liable to produce in the same manner and subject to the same rules of examination and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined as in the case of a witness in an action in the Court.

*Remuneration of assignee and inspectors.*

**Remuneration of assignee. 59.** The assignee shall receive such remuneration as shall be voted to him by the creditors at any meeting called for the purpose after the first dividend sheet has been prepared, or by the inspectors in case of the creditors failing to provide therefor subject to the review of a Judge if complained of by the assignee or any of the creditors.

**Where remuneration not fixed before the final dividend. 60.** In case the remuneration of the assignee has not been fixed under the last preceding section before the final dividend the assignee may insert in the final dividend sheet and retain as his remuneration a sum not exceeding five per cent. of the cash receipts, subject to review by a Judge, as hereinbefore provided; but no application by the assignee to review the said allowance shall be entertained unless previous to the preparation of the final dividend sheet the question of his remuneration has been brought before a meeting of creditors competent to decide the same.

**Remuneration of inspectors. 61.** The assignee may pay or allow to each inspector appointed under this Act a reasonable charge or sum for the due performance of his duties as such inspector, but no such payment or allowance to an inspector in any estate shall exceed the sum of twenty-five dollars.

*General.*

**Affidavits. 62.** Any affidavit authorized or required under this act may be sworn before any person authorized to administer oaths.

**63.** In this Act unless the context otherwise indicates: 1. The expression "Court" means the Supreme Court of Alberta in all cases except those in which the property assigned is of the value of 400 \$ or less, in which case "Court" means the District Court of the district in which the assignment is made; 2. The expression "Judge" means a Judge of such Court or of such District Court respectively.

**Act not to apply to assignments prior to Act. Nor to actions commenced. 64.** This Act shall not apply to any assignment executed before this Act comes into force or to any proceedings thereunder; nor shall the repeal mentioned in the following section affect any act done or any right or right of action existing, accruing, or accrued or any action or proceeding commenced in a civil cause before such repeal takes effect, but such rights may be enforced and such action or proceeding continued as though this Act had not been passed.

**Repeal. 65.** Chapter 42 of the Consolidated Ordinances 1898 and chapter 11 of the Ordinances of 1900 are hereby repealed.

**b) St. 1910, (Sess. II) c. 4. An Act to prevent Priority among Execution Creditors (16th December, 1910).**

**Short title. 1.** This Act may be cited as *The Creditors' Relief Act*.

**Interpretation. 2.** In this Act: 1. "District" shall mean a judicial district; 2. "Execution" shall include a writ of fieri facias and every subsequent writ for giving effect thereto; 3. "Judge" shall mean a judge of the District Court of the district, the sheriff of which is required to take the proceedings directed by this Act; 4. "Sheriff" shall include any officer to whom an execution is directed; 5. Where a Judge is disqualified to act in a matter arising under this Act a Judge of the District Court of an adjoining district shall have jurisdiction to act in his place.

**No priority among execution creditors.** 3. Subject to the provisions hereinafter contained there shall be no priority among creditors by execution from the Supreme Court or from a District Court.

**Attachment to be for benefit of all creditors. Payment to be made to sheriff. Attachments in small debt case. Money paid to sheriff who has no execution in hand. Money paid into District Court. Attaching creditor to share with other creditors. Sheriff's poundage. Sheriff may recover attached debt.** 4. 1. A creditor who attaches a debt shall be deemed to do so for the benefit of all creditors of his debtor as well as for himself. 2. Payment of such debt shall be made to the sheriff of the district in which the garnishee resides, or if there are more garnishees than one in respect of the same debt then to the sheriff of the district in which any one of them resides. 3. This section shall not apply to debts attached by proceedings in a small debt case unless, before the amount recovered by the garnishee proceedings is actually received by the creditor, an execution against the property of the debtor is placed in the hands of the sheriff of such district. 4. Where money is paid to a sheriff in whose hands there is no execution against the property of the debtor, and there is in the hands of the sheriff of another district an execution against the property of the debtor, the Court or a Judge on the application of such last mentioned sheriff or of a creditor or of the debtor may direct, on such terms as to costs and otherwise as may seem just, that such money be paid over to such last mentioned sheriff to be distributed by him as if such money had then been paid to him by the garnishee; and the Court or Judge shall fix the compensation to be paid to the sheriff by whom the money was received from the garnishee for his services. 5. Where money which a sheriff is entitled to receive under the provisions of this section is paid into a District Court in a small debt action the sheriff shall be entitled to demand and receive the same from the clerk of such Court for the purpose of distributing it under the provisions of this Act. 6. An attaching creditor shall be entitled to share in respect of his claim against the debtor in any distribution made under the provisions of this Act, but his share shall not exceed the amount recovered by his garnishee proceedings unless he has in due time placed an execution or a certificate given under this Act in the sheriff's hands. 7. The sheriff shall be entitled to poundage upon money received and distributed by him under the provisions of this section at the rate of one and a quarter per cent. and no more. 8. If an attached debt which the sheriff is entitled to receive, or any part of it, is received by the attaching creditor, the sheriff may recover the same from him; but a clerk of a District Court shall not be liable for making payment to the creditor in a small debt action unless at the time of payment he has notice that there is an execution against the property of the debtor in the sheriff's hands.

**Sheriff after levy to enter notice thereof. Distribution. Moneys realized on sale under interpleader order. Rights of creditors in case of interpleader proceedings. Order as to carrying on proceedings. Time allowed in interpleader. Application of subsequent levy. Notice and distribution on further levy. Credit to be given of payment received. Lands and goods writs share equally. What creditors may share. Money realized under rules of Court relating to absconding debtors. Wages or salary due by execution debtor.** 5. 1. Where a sheriff levies money under an execution against the property of a debtor, or receives money under proceedings had and taken under the rules of Court relating to the attachment of personal property of an absconding debtor, he shall forthwith make an entry, form 1, in a book to be kept in his office open to public inspection without charge. 2. The money shall thereafter be distributed rateably among all execution creditors and other creditors whose executions or certificates given under this Act were in the sheriff's hands at the time of the levy or receipt of the money, or who deliver their executions or certificates to the sheriff within one month from the entry; subject, however, to the provisions hereinafter contained as to the retention of dividends in the case of contested claims, and to the payment of the costs of the creditor under whose execution the amount was made; and subject also to the provisions of subsection 6 of the next preceding section, and, as respects money recovered by garnishee proceedings, subject to the payment thereof to the creditor who obtained the attaching order of his costs of such proceedings. 3. Subsection 2 shall not apply to money received by a sheriff as the proceeds of a sale of property by him under an interpleader order but upon the determination of the interpleader proceeding in favour of the creditors the moneys whether in the sheriff's hands or in Court pending such deter-



mination, shall, subject to the provisions of subsection 4, be distributed by the sheriff among the creditors contesting the adverse claims. 4. Where proceedings are taken by a sheriff for relief under any provisions relating to interpleader those creditors only who are parties thereto and who agree to contribute pro rata in proportion to the amount of their executions or certificates to the expense of contesting any adverse claim shall be entitled to share in any benefit which may be derived from the contestation of such claim so far as may be necessary to satisfy their executions or certificates. 5. The Judge making the interpleader order may direct that one creditor shall have the carriage of the interpleader proceedings on behalf of all creditors interested, and the costs thereof as between solicitor and client shall be a first charge upon the money or goods which may be found by the proceedings to be applicable upon the executions or certificates. 6. Upon any interpleader application the Judge may allow to other creditors who desire to take part in the contest a reasonable time in which to place their executions or certificates in the sheriff's hands upon such terms as to costs and otherwise as may be deemed just. 7. Where the sheriff, subsequently to the entry, but within the month, levies a further amount from the property of a debtor or receives money in respect of a debt which has been attached or sold, the same shall be dealt with as if such amount had been levied or received prior to the entry. 8. If after the month a further amount is so levied or received a new notice shall be entered and the distribution to be made of the amount so levied or received and of any further amount levied or received within a month of the entry of the last mentioned entry shall be governed by the entry thereof in accordance with the foregoing provisions of this section, and so from time to time as further amounts are so levied or received. 9. Where a creditor has shared in a previous distribution he shall be entitled to share in a subsequent one only in respect of the amount remaining due to him after crediting what he has received in any previous distribution. 10. In the distribution of money under this section creditors who have executions against goods or lands only or against goods and lands shall be entitled to share rateably with all others any moneys realized under execution against either goods or lands or against both, or under an attaching order. 11. Subject to the provisions of subsection 6 of section 4 a creditor shall not be entitled to share in the distribution unless by delivery of an execution, or otherwise under this Act, he has established a claim against the debtor either alone or jointly with some other person. 12. Where moneys in the hands of the sheriff for distribution are the proceeds of the property of an absconding debtor against whom an order of attachment has been issued under the rules of Court relating to the attachment of personal property of absconding debtors the period mentioned in subsection 2 shall be two months, and subsection 8 shall be read as if the words "the month" in the first line were "the two months". 13. All persons who are at the time of the seizure by the sheriff, or who within one month prior thereto have been in the employment of the execution debtor, and who shall become entitled to share in the distribution of money levied out of the property of a debtor, shall be entitled to be paid out of such money the wages or salary due to them by the execution debtor, not exceeding three months' wages or salary, in priority to the claims of the other creditors of the execution debtor, and shall be entitled to share pro rata with such other creditors as to the residue, if any, of their claims.

**Proceedings where debtor allows execution to remain unsatisfied.** 6. If a debtor permits an execution issued against him under which any of his goods or chattels are seized by a sheriff to remain unsatisfied in the sheriff's hands until within two days of the time fixed by the sheriff for the sale thereof, or for twenty days after the seizure, or allows an execution against his lands to remain unsatisfied for nine months after it has been placed in the sheriff's hands, the proceedings hereinafter authorized may be taken by other creditors or claimants in respect of debts which are overdue.

**Affidavit, of creditor. Filing affidavit or certificate. Service on debtor. Service out of Alberta.** 7. 1. An affidavit, form 2, of the debt and the particulars thereof may be made in duplicate by the creditor, or by one of the creditors in case of a joint debt, or by a person cognizant of the facts. 2. Prior to or simultaneously with the filing with the clerk of the District Court of the affidavit there shall be filed with him a certificate of the sheriff or an affidavit showing that such proceedings have been had against the debtor as entitle the creditor to proceed under this Act.

3. The claimant shall serve on the debtor one of the duplicates and a notice, form 3. 4. Where the affidavit and notice are to be served out of Alberta the judge shall by order fix the time after which the next step may be taken by the claimant as hereinafter provided.

**Notice by debtor of address for service. Entry of notice. Service at address. Service by mail. Filing affidavit. Service generally.** 8. 1. An execution debtor may give notice in writing to the sheriff that any claims to be served upon him may be served upon a solicitor in Alberta whose name and address shall be given, or by mailing the same to an address stated in the notice. 2. The sheriff shall thereupon enter the notice in the book mentioned in subsection 1 of section 5, and so long as any execution which was in the sheriff's hands at the time the notice was given shall remain in his hands shall repeat such entry immediately below any entry, form 1, made in respect of the execution, unless the notice is revoked in writing, in which case the entry thereof shall be marked "revoked." 3. So long as the notice is not revoked the affidavit of claim and notice, form 3, may, where a solicitor is named, be served upon an execution debtor by serving the same upon the solicitor, or if mailing is required then by mailing the same by registered post to the address in the notice given by the execution debtor. 4. Where the notice, form 3, served on a debtor does not state some place in or within three miles of the office of the clerk of the district within which the proceedings are being taken, at which service may be made upon the claimant, or does not give the name and address of some solicitor in Alberta who may be served on the claimant's behalf, service of any notice, paper or document may be made upon the claimant by mailing the same, by registered post addressed to the claimant at the town where the said clerk's office is situated. 5. The claimant shall file with the clerk of the District Court of the district, the sheriff of which has the execution, one of the duplicate affidavits of claim, and a copy of the notice with an affidavit of service thereof, form 4. 6. The affidavit and the notice shall where practicable be personally served upon the debtor; but if it is made to appear to the Judge that the claimant is unable to effect prompt personal service the Judge may order substitutional or other service, or may direct some act to be done which shall be deemed sufficient service.

**Certificate where claim not disputed. Delivery to sheriff and effect of certificate. Address for service to be endorsed. Further levy to be made. Time of remaining in force. Execution or certificate expiring within month of levy.** 9. 1. Where the claim is not contested in manner hereinafter mentioned, after ten days from the day of service, or after the time mentioned in the order provided for by subsection 4 of section 7 (as the case may be), on the application of the claimant and his filing proof of due service of the affidavit and notice, or where the claim is contested, upon the determination of the dispute in favour of the claimant, either in whole or in part, the clerk of the District Court shall deliver to the creditor a certificate, form 5; and where the claim is disputed as to a part only the claimant may elect by a writing filed with the clerk to abandon such part and shall be entitled to a certificate as to the residue. 2. Upon delivery of the certificate to the sheriff the claimant shall be deemed to be an execution creditor within the meaning of this Act and be entitled to share in any distribution as if he had delivered an execution to the sheriff, and the certificate shall bind the lands and goods of the debtor in the same manner as an execution; subject, however, to the debt being afterwards disputed by a creditor as hereinafter provided. 3. For the purpose of interpleader proceedings the certificate shall be deemed to be an execution. 4. If the certificate is obtained by a solicitor his name and address shall be endorsed thereon; and if obtained by the claimant in person there shall be endorsed thereon a statement of some place within three miles of the office of the clerk of the district within which proceedings are being taken, at which service may be made upon him, and in default thereof service of any notice, paper, or document may be made upon the claimant by mailing the same by registered post addressed to him at the town where the clerk's office is situated. 5. On receiving the certificate the sheriff shall make a further seizure of the property of the debtor to the amount of the debt so claimed, and the sheriff's fees; and so from time to time in case further certificates are received. 6. A certificate shall remain in force for two years from the date thereof but may from time to time be renewed in the same manner as an execution. 7. Notwithstanding the expiry of an execution or certificate before the termination of the month during which a notice of money having been levied or received is required to be entered,



the execution or certificate, as to any money levied or received during such month shall be deemed to be in full force and effect.

**Contesting claim. Affidavit of debtor. Filing and serving affidavit. Contestation by creditor. Notice of contestation. Certificate of contestation. Address for service.**

**10. 1.** The claim may be contested by the debtor or by a creditor of the debtor. **2.** Where the debtor contests the claim he shall file with the clerk an affidavit stating that he has a good defence to the claim or to a specified part of it on the merits, but the Judge may dispense with the affidavit on terms or otherwise. **3.** The debtor shall file the affidavit and serve upon the claimant a copy thereof within ten days after service upon him of the affidavit of claim and the notice, or within the time mentioned in the order provided for by subsection 4 of section 7, as the case may be, or within such further time as the Judge may allow. **4.** Where the contestation is by a creditor he shall file with the clerk an affidavit to the effect that he has reason to believe that the debt claimed is not really and in good faith due from the debtor to the claimant; but the Judge may dispense with the affidavit on terms or otherwise. **5.** Notice of contestation, whether by the debtor or by a creditor, together with a copy of the affidavit, if any, shall be served upon the claimant within five days after filing the affidavit, or after the order of the Judge if the affidavit is dispensed with. **6.** The affidavit by a creditor may be filed and a certificate thereof delivered to the sheriff at any time before distribution is made, and the sheriff shall forthwith give notice of the receipt of such certificate to the claimant. **7.** The affidavit of the debtor or other contestant shall have endorsed thereon a statement of some place in or within three miles of the office of the clerk of the district within which proceedings are being taken at which service may be made upon him, or the address of a solicitor in Alberta who may be served on his behalf, and in default thereof service of any notice, paper or document may be made upon the debtor or contestant by mailing the same by registered post addressed to him at the town where the office of the clerk of the district within which proceedings are being taken is situated.

**Service on solicitor by mailing. 11.** Where the address of a solicitor is given for service which is not within three miles of the clerk's office in which the proceedings are being carried on service may be made upon him by mailing papers by registered post to him at the address so given.

**Distribution in case of contestation. Claimant may apply for allowance of claim. When contest is not in good faith. 12. 1.** Where a claim is contested by a creditor after a certificate has been placed in the sheriff's hands the sheriff, unless the Judge otherwise orders, shall levy as if such contestation had not been made, and shall until the determination of the contestation retain in a bank the amount which would be apportionable to the claim if valid, and shall as soon after the expiry of the month as is practicable distribute the residue of the money made amongst those entitled. **2.** The claimant whose claim is contested may apply to the Judge for an order allowing his claim and determining the amount; and if he does not make such application within eight days after receiving notice of the contestation or within such further time, if any, as the Judge may allow he shall be taken to have abandoned his claim. **3.** Where the contestant is a creditor and there is reason to believe that the contestation is not being carried on in good faith any other creditor may apply for an order permitting him to intervene in the contestation.

**Trial of contestation. Where amount in controversy exceeds \$ 400. Proceedings where issue tried. 13. 1.** The Judge may determine any question in dispute in a summary manner, or may direct an action to be brought or an issue to be tried in any court and in any district for the determination thereof, and make such order as to the costs of the proceedings as he may deem just. **2.** Where the sum in controversy appears to be over \$ 400 exclusive of costs the Judge shall direct that the action be brought or the issue tried in the Supreme Court, and subject to any order which the supreme Court or a Judge thereof may make in that behalf shall name the district in which the trial is to take place. **3.** Where an issue is directed the trial shall take place and all proceedings subsequent thereto shall be the same as if it had been an action in the Court in which it is ordered to be tried.

**Production, examination, etc. 14.** The same proceedings may be had for the production of documents and for the examination of parties or others, either before or at the trial as may be taken in an ordinary action, and such proceedings may also be taken before the application to the Judge, and as a foundation therefor.

**Clerk to keep book of record. Effect of entry. Index. Copy of entry evidence.**

**15. 1.** The clerk of the District Court shall keep a book in which before giving a certificate or issuing an execution for a claim he shall enter the following particulars with reference to every claim in respect of which he gives a certificate or issues an execution: a) The name of the claimant, and of the debtor; b) The date of the entry; c) The amount of the debt, exclusive of costs; d) The amount of costs; e) If the proceedings have been set aside, that fact, and shortly the reason therefor. **2.** The entry shall (subject to the provisions of this Act) have the effect of and be a final judgment of the Court for the debt and costs. **3.** The clerk shall index the entries in a book alphabetically under the names of the debtors. **4.** Where the original papers are lost or destroyed, a copy of the entry shall be evidence of the matters therein set forth.

**Establishing claim in another district. 16.** Where a creditor has taken in one district the prescribed proceedings in respect of his claim and desires to establish his claim for the purposes of this Act in another district he may do so by obtaining from the clerk of the District Court of the district first mentioned another certificate, form 5, and delivering the same to the sheriff of such other district, and the delivery of the certificate to the sheriff shall have the same effect in such other district from the time of the delivery thereof as if the certificate had been issued by the clerk of the District Court of such other district upon proceedings therein.

**Executions may issue to any district. 17.** A creditor, entitled to obtain a certificate from the clerk of a District Court, may also sue out an execution into any district in the same manner as on an ordinary judgment; but this shall not prejudice the right of any other creditor to contest the claim of such first mentioned creditor under the provisions of this Act.

**Decision in one district binding in others. 18. 1.** Where a claim is contested in one district the decision thereon shall, as between the parties to the contestation, determine the amount of the claim for the purposes of this Act in all other districts in which the claim is filed, and the certificate of the clerk of the District Court of the district in which the contestation has taken place, of the result thereof, shall be sufficient evidence of the decision. **2.** Upon payment of a fee of fifty cents the certificate shall be granted to any party to the proceedings who applies therefor.

**Application of money paid by debtor voluntarily to sheriff. 19. 1.** Where the debtor, without a sale by the sheriff, pays the full amount owing in respect of the executions and claims in the sheriff's hands at the time of such payment and no other claim has been filed, or where all executions and certificates in the sheriff's hands are withdrawn and any claims filed are paid or withdrawn, notice shall not be entered under the provisions of section 5 and no further proceedings shall be taken under section 6. **2.** Save as aforesaid after a certificate has been delivered to the sheriff the withdrawal or expiry of the execution upon which the proceedings are founded, or any stay of the same, or the satisfaction of the plaintiff's claim thereon, or the setting aside or return of the execution, shall not affect the proceedings which may be taken under this Act, and except so far as the action taken with respect to the execution may affect the amount to be levied the sheriff shall levy upon the property of the debtor as he would have done had the execution remained in his hands in full force for execution and he may also take the like proceedings as he would have been entitled to take had the execution been a writ of venditioni exponas; **3.** Where a debtor, without a sale by the sheriff, pays to him part of the amount owing in respect of an execution or certificate in his hands, and there is at the time no other execution or certificate in his hands, he shall apply the same on the execution or certificate, and section 5 shall not apply to the money so paid.

**Costs of proceedings against absconding debtors. 20. 1.** Where proceedings have been taken against a debtor under the rules of Court relating to the attachment of personal property of absconding debtors, and his property has been attached under an order of attachment, before an execution has been placed in the hands of the sheriff, and the moneys levied are the proceeds of such property or a part thereof, the cost of the order of attachment, or if there are more than one the one first placed in the sheriff's hands and the proceedings thereon shall have priority over the claim of all other creditors. **2.** Where an attaching creditor is entitled to priority under subsection 1 of this section the priority provided for by subsection 2 of section 5 shall not be given to the execution creditor.



**Costs of claimant. 21.** 1. The clerk of the District Court shall ascertain and state in his certificate the amount of the costs to which the claimant is entitled as against the debtor. 2. Such costs shall be the following: a) For serving the affidavit of claim and notice in the case of claims over \$ 400 on the scale of the Supreme Court, and in the case of claims not exceeding \$ 400 on the District Court scale; b) The fees paid to the clerk of the District Court on the scale for like proceedings in the District Court; c) Where there is no contest \$ 5 for fees of a solicitor, if one is employed, unless the amount of the claim does not exceed \$ 200; in which case the sum of \$ 2 shall be allowed; d) Where there is a contest such additional costs as the Judge may allow, to be taxed on the scale of the Supreme Court or District Court, according as the amount in dispute is within the jurisdiction of one or other of such courts.

**Payment to sheriff of fund in Court. 22.** Where there is in any Court a fund belonging to an execution debtor or to which he is entitled the same, or a sufficient part thereof to meet the executions and certificates in the sheriff's hands, may, on the application of the sheriff or any person interested, be paid over to the sheriff, and the same shall be deemed to be money levied under execution within the meaning of this Act.

**Money made by receiver. 23.** Where a judgment creditor obtains the appointment of a receiver by way of equitable execution of property of his debtor the receiver shall pay into Court the money received by him by virtue of his receivership, and the same shall be subject to the provisions of the next preceding section, but the creditor shall be entitled to be paid thereout the costs of and incidental to the receivership order and the proceedings thereon in priority to the claims of all other creditors.

**Apportionment of money when amount insufficient to pay claim in full. 24.** Where the amount levied by the sheriff is not sufficient to pay the executions and certificates with costs in full the money shall be applied to the payment rateably of such debts and costs of the creditors after retaining the sheriff's fees including poundage, and after payment in full of the taxed costs and the costs of the execution to the creditor at whose instance and under whose execution the seizure and levy were made where he is entitled to priority therefor under the provisions of this Act.

**Levy of interest and costs of renewal. 25.** The sheriff if directed by an endorsement upon a certificate shall, in addition to the amounts named therein, levy interest on such amounts from the date of the certificate or from the date named in that behalf in the certificate, and also \$ 1.35 for the disbursements on every renewal of the certificate; and where such renewal is made upon the application of a solicitor he shall also levy \$ 1.25 for the solicitor's costs on the renewal.

**Sheriff's poundage. 26.** Where money is to be distributed by the sheriff under this Act he shall not be entitled to poundage as upon separate executions or certificates, but only upon the net proceeds distributable by him at the same rate as if the whole amount had been payable upon one execution.

**Money made on any writ to be considered as made on all writs entitled to benefit thereof. Compelling payment by sheriff. 27.** 1. Where money is made under an execution it shall be taken to have been made under all the executions and certificates entitled to the benefit thereof, and upon payment being made to the person entitled under any such execution or certificate the sheriff shall endorse thereon a memorandum of the amount so paid, but he shall not, except on the request of the party who issued the execution, or by direction of the Court out of which the same issued, or of a Judge thereof, return the execution until the same has been fully satisfied or has expired, in which later case the sheriff shall make a formal return of the amount made thereunder. 2. The like proceedings may be taken to compel payment by the sheriff of money payable in respect to a certificate as can now be had to compel the return by the sheriff of an execution.

**Statement to be kept in sheriff's office pending distribution. 28.** Pending the distribution the sheriff shall keep in the book mentioned in section 5 a statement, form 6, showing the following particulars: a) The amounts levied or received and the dates of levy or receipt; b) Each execution, certificate or order in his hands at the time of making the entry, form 1, or subsequently received during the month, the amount thereof, for debt and costs, and the date of receipt, and such statement shall be amended from time to time as additional amounts are levied or received or further executions, certificates, or orders are received.

**Sheriff to give information as to estate of debtor.** 29. The sheriff shall at all times without fee answer any reasonable question which he may be asked orally in respect to the property of the debtor by a creditor, or any one acting upon his behalf and shall facilitate the obtaining by him of full information respecting the same and the probable dividend to be realized therefrom in his district, or any other information in connection with the property which the creditor may reasonably desire to obtain.

**Distribution by sheriff where amount levied insufficient to meet all claims.** 30. 1. Where at the time for distribution the money is insufficient to pay all claims in full the sheriff shall first prepare for examination by the debtor and his creditors a list of the creditors entitled to share in the distribution, with the amount due to each for principal, interest and costs; 2. The list shall be so arranged as to show the amount payable to each creditor and the total amount to be distributed; and the sheriff shall deliver, or send by registered post to each creditor or his solicitor, a copy of the list; 3. If within eight days after all the copies have been delivered or posted, or within such further time as the Judge may allow, no objection is made as provided by this Act the sheriff shall make distribution forthwith pursuant to such list; 4. If objection is made the sheriff shall forthwith distribute rateably so much of the money made, and among such persons, as will not interfere with the effect of the objection in case the same should be allowed; 5. Any person affected by the proposed scheme of distribution may contest the same by giving within the time mentioned in subsection 3 a notice in writing to the sheriff, stating his objection to the scheme and the grounds thereof; 6. The contestant shall within eight days thereafter apply to the Judge for an order adjudicating upon the matter in dispute, otherwise the contestation shall be taken to be abandoned; 7. The contestant shall within the time mentioned in the next preceding subsection obtain from the Judge an appointment for hearing and determining the matter in dispute; 8. A copy of the appointment and a notice in writing, form 7, of the objections stating the grounds thereof shall be served by the contestant upon the debtor unless he is the contestant, and upon the creditors or such of them as the judge may direct; 9. The Judge may determine any question in dispute in a summary manner, or may direct an action to be brought or an issue to be tried with or without a jury in any Court and in any district for the determination thereof, and may make such order as to the costs of the proceedings as he may deem just, and the provisions of subsections 2 and 3 of section 13 shall apply; 10. Where a claimant is held to be not entitled, or to be entitled to part only of his claim, the money retained pending the contestation, or the portion as to which the claimant shall have failed, shall be distributed among the creditors who would have been entitled thereto, as the same would have been distributed had the claim in respect thereof not been made.

**Directions by Judge to avoid unnecessary parties and trials.** 31. Where several creditors are interested in a contestation, either for or against the same, the Judge shall give such directions for saving the expense of an unnecessary number of parties and trials, and of unnecessary proceedings, as he may deem just, and shall direct by whom and in what proportions any costs incurred in the contestation or in any proceedings thereunder shall be paid, and whether any and what costs shall be paid out of the money levied.

**Direction by Judge to sheriff where claim is disputed.** 32. The Judge may direct the sheriff to levy for an amount sufficient to cover a claim which is in dispute or part thereof, or if it appears to the Judge that it is improbable that the debtor has other sufficient property he may direct the sheriff to retain in his hands during the contestation the share which if the claim is sustained will be apportionable to it, or a part thereof. 2. An order to levy under this section shall confer on the sheriff the same authority as he would have under an execution.

**Decisions to be binding on all creditors.** 33. The decision of a Judge of the Supreme or District Court or of the Court en banc on an appeal shall bind the debtor and all his creditors, unless it appears that the decision was obtained by fraud or collusion.

**Sheriff to deposit moneys in bank.** 34. Where money comes into the hands of a sheriff he shall whenever the same amounts to \$100 deposit it in some chartered bank designated for that purpose by order of the Lieutenant-Governor in Council; 2. The deposit shall be made in a special account in the name of the sheriff, as "Trustee for the creditors of . . . .," (the debtor.)



**Attaching orders by sheriff or creditor. 35.** Where there are in the sheriff's hands several executions and certificates, and there does not appear to be sufficient property to pay all and his own fees, he may apply for an order attaching any debt owing to the execution debtor by any person resident in the district of such sheriff, whether the debt is owing by such person alone or jointly with another person resident or not resident in such district, and to procure the order and to obtain and enforce payment of the debt the sheriff may take the same proceedings as a creditor; and in such case an execution may be directed to him in the same manner as if the attachment were by a creditor; and the proceeds of the debt attached shall be dealt with and distributed in the same manner as if he had realized the same under execution.

**Appeal. 36.** If any party to a contestation or matter upon which a judge has rendered or made a final judgment or order is dissatisfied with such judgment or order, and the same is in respect to a question involving a sum greater than \$ 200, he may appeal therefrom to the Supreme Court en banc, as nearly as may be according to the practice in force in respect of appeals from a District Court or a Judge thereof.

**Powers of Judge. 37.** For the purpose of giving effect to this Act and carrying out its provisions a Judge shall have all the powers which a District Court or a Judge thereof has by law for other purposes; and any proceedings erroneously taken under this Act may be set aside by the Judge or without costs as he thinks fit.

**Evidence on proceeding before Judge. 38.** Upon any proceeding before the Judge the evidence may be taken orally or by affidavit as the Judge may direct.

**39.** The following fees shall be payable to the clerk in law stamps upon all claims filed:

On an affidavit of claim where the amount claimed does not exceed \$ 400	\$ .80
On every such affidavit where the claim exceeds \$ 400 . . . . .	1.50
On every certificate of the clerk given under section 9, where the claim does not exceed \$ 400 . . . . .	.80
On every such certificate where the claim exceeds \$ 400. . . . .	1.50
On every order made by the Judge allowing or disallowing a claim, where the claim does not exceed \$ 400 . . . . .	.50
On every such order where the claim exceeds \$ 400 . . . . .	1.00

There shall be paid to the sheriff on certificates placed in his hands under this Act, the same fees as are payable on writs of execution.

**Application of Judicature Act and rules of Court. 40.** Except where inconsistent with this Act, the provisions of *The Judicature Act* and rules of Court as to practice and procedure shall apply to proceedings under this Act.

**When Act is applicable. 41.** The provisions of this Act shall not apply to the proceeds of any seizure allowed under section 4 of chapter 27 of *The Consolidated Ordinances*.

**Repeal. 42.** Chapter 26 of *The Consolidated Ordinances of 1898* and all amendments thereto are repealed.

### *Schedule.*

#### **Form 1. Sheriff's Entry.**

I have on this day in my hands for distribution under *The Creditors' Relief Act* among the creditors of *C. D.* the sum of \* ..... and the distribution will be made among the creditors of the said *C. D.* entitled to share therein at the expiration of one month from this day.

Dated the                      day of                      19                     

*F. G.,*  
Sheriff.

#### **Form 2. Affidavit of Claim.**

##### *The Creditors' relief Act.*

In the District Court of the District of .....  
A.; B., Claimant, and  
C. D., Debtor.

I, A. B. of ..... in the Province of Alberta, merchant (or as the case may be) make oath and say:

1. I am the above named claimant (or the duly authorized agent of the claimant in this behalf, and have a personal knowledge of the matter hereinafter deposed to.)

2. The above named debtor is justly and truly indebted to me (or to the above named claimant) in the sum of \$ ..... for (here state shortly the nature and particulars of the claim).  
Sworn before me at ..... }  
this ..... day of ..... } A. B.  
19...

.....  
A Commissioner, etc. (or as the case may be).

**Form 3. Notice to be Served with Claim.**  
*The Creditors' relief Act.*

In the District Court of the District of  
A. B., Claimant, and  
C. D., Debtor.  
To the above (or within) named debtor.  
Take notice that the claimant intends to file with the clerk of the District Court of the District of ..... (or as the case may be) the original affidavit of claim of which a duplicate is served herewith, and that this proceeding is taken by reason of there being in the hands of the sheriff of the said district an execution against your property, and that the claimant intends to call on the sheriff to levy the amount of the said debt from your property under the authority of *The Creditors' relief Act*.  
And further take notice that if you desire to contest the said claim, or any part thereof, you must, within ten\*) days after the service of this notice upon you, file with the clerk of the said Court an affidavit stating that you have a good defence to the said claim on the merits, or that you have such defence to a specified part of the claim. If no such affidavit is filed the claim will be treated as admitted by you. If the affidavit is filed contesting the claim as to part only such claim may be so treated as to the part not contested.  
You are further hereby notified that unless you endorse upon such affidavit filed by you a statement of some place within three miles of the said clerks' office at which service may be made upon you, or the address of some solicitor in Alberta who may be served on your behalf, service may be made upon you of any notice, paper, or document, by mailing the same by registered post addressed to you at the town in which the said clerk's office is situate.  
Dated the ..... day of ..... 19...

A. B.,  
Claimant.

\*) If further time is given by a Judge the notice should be varied accordingly.

**Form 4. Affidavit of Service of Claim.**  
*The Creditors' relief Act.*

In the District Court of the District of .....  
A. B., Claimant, and  
C. D., Debtor.  
I, G. H., of ..... in the District of ..... make oath and say:  
That I did on the ..... day of ..... 19..., personally serve C. D., the above named debtor (or as the case may be) with an original affidavit identical with the annexed affidavit and that there was at the time of such service attached to (or endorsed upon) the said affidavit so served a true copy of the notice addressed to the debtor, now attached to (or endorsed upon) the said annexed affidavit.  
Sworn before me at ..... }  
this ..... day of ..... } G. H.  
19...  
.....  
A Commissioner, etc. (or as the case may be).

**Form 5. Certificate of Proof of Claim.**  
*The Creditors' relief Act.*

In the District Court of the District of .....  
A. B., Claimant, and  
C. D., Debtor.  
I, G. H., clerk of the District Court of the District of ..... do hereby certify:  
1. That the above named claimant did on the ..... day of ..... 19..., file with me a claim against the above named debtor, for the sum of \$ ....., together with an affidavit of personal service thereof (or as the case may require) and of the notice required by *The Creditors' Relief Act*, upon the said debtor, and that it thereby appears that such service was made on the ..... day of ..... 19...



2. And I further certify that the debtor has not contested the said claim (or has only contested the sum of \$ . . . . ., part of the said claim (*as the case may be*) and that the claimant having abandoned such part is entitled to the residue of his claim being the sum of \$ . . . . ., and the further sum of \$ . . . . . for costs).

(*Or when the claim is contested in whole or in part*).

3. That the claim has been allowed by the judge at the sum of \$ \_\_\_\_\_ with \$  
for costs. G. H., Clerk.

**Form 6. Sheriff's Statement of Executions, etc., in His Hands Against C. D.**

Gause	Proceeding	Claims without costs	Costs	Date of receipt by Sheriff	Amount levied or received	Date of Levy or receipt
A. B. v. C. D.	Fi. Fa. goods and lands	\$ 504	\$ 30	18 Feb. 19	\$ 500	1 May, 19
F. G. v. C. D. & E. G.	Fi. Fa. goods and lands	400	20	1 Mch. 19	300	3 May, 19 Nothing made against E. G. 10 May, 19
K. L. v. C. D.	Garnishee order	500	30		300	
M. N. v. C. D.	Creditors Certificate	400	5	15 May 19		

**Form 7. Notice of Contestation of Scheme of Distribution.**

*The Creditors' relief Act.*

In the District Court of the District of  
A. B., Claimant, and  
C. D., Debtor.

To C. D., debtor and F. G. and M. N., claimants.

Take notice that I contest the scheme of distribution prepared by the sheriff of the District of \_\_\_\_\_ in respect of the claims of you the said F. G. and M. N. on the following ground (*state distinctly the ground*), and a copy of the judge's appointment to adjudicate upon the matter is served herewith.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ X. Y.,  
Contestant.

**c) St. 1908, c. 6. An Act respecting The Imperial Debtors' Act of 1869 (5th March, 1908).**

**Imperial Debtors' Act not to be in force in the Province.** 1. The Act of the Parliament of Great Britain and Ireland, known as The Debtors' Act, 1869, and being Chapter 62 of 32 and 33 Victoria, shall not be in force or effect in the Province of Alberta from and after the date of the coming into force of this Act.

**Existing proceedings not affected.** 2. [As amended by St. 1909, c. 4, § 20.] Nothing herein contained shall be taken to imply or to mean that the said Debtors' Act has been in force in the Province, prior to the date of the coming into force of this Act; nor shall the passage of this Act in any way affect any proceedings already taken or orders made, if any, under and by virtue of the said Debtors' Act, but notwithstanding anything herein contained such proceedings, if any, or any other necessary proceedings under the said Debtors' Act, that may be required to complete, alter or discharge any such proceedings had, or orders made, prior to the coming into force of this Act, may be had and taken as though this Act had not been passed. And nothing herein contained shall be deemed to have brought into force within the Province the law of England as to arrest or imprisonment for making default in payment of a sum of money as the same existed either immediately prior to the passing of the said Imperial Debtors' Act of 1869, or in the year 1670; and it is hereby declared that the said law of England as to arrest or imprisonment for making default in payment of a sum of money as the same existed at either of the dates mentioned is not in force in the Province.

## II. British Columbia.

### Law in force.

The civil laws of England, as the same existed on 19th November, 1858, in so far as applicable to local conditions, and except as modified by Imperial legislation extended to the Province of British Columbia, or by Dominion legislation, or legislation of British Columbia or of any other Colony comprised within the geographical limits thereof, is in force<sup>1</sup>).

### Statutes.<sup>2)</sup>

#### Application of Law.

#### R. S. 1897, c. 115. An Act respecting the general Application of English Law.

##### *Short title.*

**Short title.** 1. This Act may be cited as the *English Law Act*.

##### *Application of civil laws.*

**Civil law of England put in force; saving as modified by past legislation.** 2. The civil laws of England, as the same existed on the 19th day of November, 1858, and so far as the same are not from local circumstances inapplicable, shall be in force in all parts of British Columbia. Provided, however, that the said laws shall be held to be modified and altered by all legislation still having the force of law of the Province of British Columbia, or of any former Colony comprised within the geographical limits thereof.

### Partnership.

#### a) R. S. 1897, c. 150. An Act respecting Partnership.

**Short title.** 1. This Act may be cited as the *Partnership Act*.  
1894, c. 36, § 86; Imp. § 1.

##### *Part I. Respecting General Partnerships.*

[2—46. Substantially embody the provisions of the Imperial Partnership Act, 1890, (53 & 54 Vic. c. 39).]

See notes to the General Partnership Acts of the other Provinces, especially those of Ontario and Manitoba. An agreement to form a partnership entered into between a person who had made a tender on certain government work and another who intended to bid on the same, providing that the latter should make a higher bid than the former and that in the event that the tender of the former should be accepted the profits should be divided, creates a partnership upon the happening of the condition, and is not void as against public policy. — *Stevenson v. Boyd*, (1897), 5 B. C. 626. Where persons are in partnership as architects, and one member of the firm receives an appointment from Government as supervising architect of a government building, the partner so appointed may, in the absence of a specific provision to the contrary, dissolve the partnership, and the other partners are not entitled to share in the salary after the dissolution. — *Cane v. McDonald*, (1902), 9 B. C. 297; affirmed (1903), 10 B. C. 444. *Quære*, whether a company authorized to enter into contracts for the purposes of its business may enter into an agreement with an individual to amalgamate the businesses theretofore carried on separately by the two concerns, and to divide the profits. — *Roedde v. News-Advertiser Publishing Co.*, (1897), 4 B. C. 7. Although the statements of a partner are admissible against the partnership, they are not admissible against the co-partner to establish the existence of the partnership itself. — *British Columbia Iron Works v. Buse*, (1894), 4 B. C. 419. As to mining partnerships, see *Gray v. McCallum*, (1896), 5 B. C. 462; *Wells v. Petty*, (1896), 5 B. C. 353; *McNerhanie v. Archibald*, (1898), 6 B. C. 260. As to the application of the Statute of Frauds to partnership agreements, see *Wells v.*

<sup>1)</sup> R. S. 1897, c. 115, § 2, reprinted in full, *infra*. — <sup>2)</sup> As in force 1st July, 1911.



Petty, (1896), 5 B. C. 353; *Stussi v. Brown*, (1896), 5 B. C. 380; *Brown v. Grady*, (1898), 6 B. C. 190; *McNerhanie v. Archibald*, (1898), 6 B. C. 260; *Horne v. Gordon*, (1909), 42 S. C. R. 240, reversing *Gordon v. Horne*, (1908), 14 B. C. 138. Partners and the executors of a deceased partner must account to the other partners for all sums obtained from partnership transactions. — *Oppenheimer v. Sweeny*, (1906), 13 B. C. 117. A bank has no lien on the separate accounts of the partner to cover overdrafts of the firm. — *Richards v. Bank of British North America*, (1901), 8 B. C. 143; affirmed on this point, (1901), 8 B. C. 209.

## *Part II. Respecting Limited Partnerships.<sup>1)</sup>*

**Limited partnerships, how formed.** 47. Limited partnerships for the transacting of any trading, manufacturing, or mining business within the Province of British Columbia, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities hereinafter mentioned, but the provisions of this Part shall not be construed to authorise any such partnership for the purpose of banking, or the construction or working of railways or making insurance.

1894, c. 36, § 46; Imp. § 4.

**Of whom to consist. Special and general partners.** 48. Such partnerships may consist of one or more persons, who shall be called general partners, and of one or more persons who contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners.

1894, c. 36, § 47; Imp. § 4 (2).

**Liability of special partners.** 49. Special partners shall not be liable for the debts of the partnership beyond the amounts by them contributed to the capital.

1894, c. 36, § 48; Imp. § 4 (2).

**General partners to transact business and sign.** 50. The general partners only shall be authorised to transact business and sign for the partnership, and to bind the same.

1894, c. 36, § 49; Imp. § 6.

**Partnership, how formed.** 51. The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain: 1. The name of firm under which the partnership is to be conducted; 2. The general nature of the business intended to be transacted; 3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their usual places of residence; 4. The amount of the capital stock which each special partner has contributed; 5. The period at which the partnership is to commence, and the period at which it will terminate.

1894, c. 36, § 50; Imp. § 8.

**Certificate, form, and attestation of.** 52. The certificate shall be in the words and to the effect of the form given in Schedule A to this Act, and shall be signed by the several persons forming the partnership, before a notary public, who shall duly certify the same.

1894, c. 36, § 51.

**Filing of certificate.** 53. The certificate so signed and certified shall be filed in the office of the Registrar of the County Court of the County in which the principal place of business of the partnership is situate, and shall be recorded by him at full length in a book to be for that purpose kept and open to public inspection. The Registrar shall receive from the person filing the declaration, for the use of Her Majesty, the sum of two dollars.

1894, c. 36, § 52.

**Notice of partnership to be published in B. C. Gazette.** 54. No such partnership shall be deemed to have been formed until a certificate has been made, certified, filed, and recorded as above directed, and notice thereof published in the *British Columbia Gazette*; and if any false statement is made in such certificate, all the persons interested in the partnership shall be liable for all the engagements thereof as general partners.

1894, c. 36, § 53; Imp. § 10.

**Renewal or continuance to be filed, etc. Otherwise deemed general. Fees for renewal.** 55. Every renewal or continuance of a partnership beyond the time originally fixed for its duration shall be certified, filed, advertised, and recorded in the manner herein required for its original formation; and every partnership other-

<sup>1)</sup> The references in the notes to this Part are to the British Columbia Act indicated and (Imp.) to the Imperial *Limited Partnerships Act, 1907*, (7 Edw. 7, c. 69).

wise renewed or continued shall be deemed a general partnership. The Registrar shall receive for the use of Her Majesty a fee of fifty cents for every such renewal or continuance.

1894, c. 36, § 54; Imp. § 9.

**Alteration in names of partners or nature of business deemed dissolution. 56.** Every alteration made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership, and every such partnership in any manner carried on after any such alteration has been made, shall be deemed a general partnership, unless renewed as a special partnership, according to the provisions of the next preceding section.

1894, c. 36, § 55.

**Business to be conducted in a firm-name, in which name of special partner not to appear. 57.** The business of the partnership shall be conducted under a firm name in which, or in connection with which, the name of a special partner shall not under any circumstances appear or be used; and if the name of a special partner so appears or is so used, he shall ipso facto be and be deemed to be a general partner.

1894, c. 36, § 56.

**Actions in relation to the business of the partnership, how brought. 58.** Actions in relation to the business of the partnership may be brought and conducted by and against the general partners in the same manner as if there were no special partner.

1894, c. 36, § 57.

**Capital stock contributed by special partner not to be withdrawn by him or received as dividends, etc., but he may receive annual interest and his proportion of the profits. 59.** No part of the sum which a special partner has contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest does not reduce the original amount of the capital; and if, after the payment of such interest, any profits remain to be divided, he may also receive his portion of such profits.

1894, c. 36, § 58.

**If special partner receives part of original capital as interest, etc., he shall re-pay. 60.** If it appears that by the payment of interest or profits to a special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the deficient capital with interest.

1894, c. 36, § 59.

**Special partner may examine state and progress, etc., and advise; but shall not conduct the business nor act as agent, etc.; if he does, deemed general partner. 61.** A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management; but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise; and if he interferes contrary to these provisions, he shall be deemed a general partner.

1894, c. 36, § 60; Imp. § 6 (1).

**General partners shall account to each other and special partners. 62.** The general partners shall be liable to account to each other and to the special partners for their management of the concern in like manner as other partners.

1894, c. 36, § 61.

**In insolvency special partners deferred to other creditors. 63.** In case of insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership have been satisfied.

1894, c. 36, § 62.

**Notice of dissolution to be filed and published. 64.** No dissolution of such partnership by the acts of the parties shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution has been filed in the office in which the original certificate was recorded, and has been published once in each week for three weeks in a newspaper published in the County or District where the partnership has its principal place of business, if there be a newspaper published there, and for the same time in the *British Columbia Gazette*.

1894, c. 36, § 63.



**Application of Part I. 65.** Save as hereinbefore provided for in this Part, limited partnerships shall be governed by the provisions, so far as applicable, of Part I. of this Act.

1894, c. 36, § 64; Imp. § 7.

### *Part III. Respecting Registration of General Partnerships.*

**Members of general partnership to make declaration. 66.** [As amended by 1899, c. 57, § 2.] 1. All persons now associated in or hereafter entering into a general partnership for trading, manufacturing, or mining purposes, shall cause to be delivered to the Registrar of the County Court of the county in which they carry or intend to carry on business, a declaration in writing, signed by the several members of such firm. 2. If, however, any of the said members are absent from the place where they carry or intend to carry on business at the time of making the declaration, then the declaration shall be signed by the members present in their own names and also for their absent co-members, under their special authority to that effect, and such special authority shall be at the same time filed with the Registrar and annexed to the declaration. 3. Provided that where there is more than one Registrar of a County Court for any county such declaration shall be delivered to the Registrar whose office is nearest to the place of business of such partnership, and in the same county.

1894, c. 36, § 65.

**Form of declaration, etc., and what it shall contain. 67.** The declaration shall be in the form or to the effect of Schedule B to this Act, and shall contain the names, surnames, additions, and residences of each and every partner as aforesaid, and the firm-name, and shall state also the time during which the firm has existed or is to exist, and declare that the persons therein named are the only members of such firm.

1894, c. 36, § 66.

**Declaration filed, when. 68.** The declaration shall, in the case of firms formed after the coming into force of this Act, be filed within three months next after the formation of the firm, and in the case of firms existing at the time of the coming into force of this Act, within three months after the coming into force of the Act.

1894, c. 36, § 67.

**Declaration on change and alteration in firm. 69.** A similar declaration shall in like manner be filed when and so often as any change or alteration takes place in the membership of the firm, or in the firm-name, or in the case of any member of the firm ceasing to reside in the Province; and every new declaration shall state the alteration in the membership of firm or in the firm-name.

1894, c. 36, § 68.

**Allegations in declaration not controvertible against certain parties. 70.** The allegations made in the declarations aforesaid shall not be controvertible as against any party by any person who has signed the same, nor as against any party not being a member of the firm by any person who has signed the same, or who was really a member of the firm therein mentioned at the time the declaration were respectively made.

1894, c. 36, § 69.

**Until new declaration made, deemed to be a partner; partners may be sued. 71.** Until a new declaration is made and filed by him or by his partners, or any of them as aforesaid, no such signer shall be deemed to have ceased to be a partner; but nothing herein contained shall exempt from liability any person who, being a partner, fails to declare the same as already provided; and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or they may be sued alone, and if judgment is recovered against them, any other partner or partners may be sued jointly or severally in an action on the original cause of action upon which the judgment was rendered; nor shall anything in this Part be construed to affect the rights of any partners with regard to each other, except that no declaration as aforesaid shall be controverted by any signer thereof.

1894, c. 36, § 70.

**Certificate of dissolution. 72.** Upon the dissolution of a firm, any or all of the persons who composed the firm, may sign a declaration certifying the dissolution of the firm; such declaration may be in the form of Schedule C to this Act.

1894, c. 36, § 71.

If declaration not filed in certain cases, action may be brought against one without naming the others, under firm-name. Where action brought on instrument in writing. 73. 1. If any persons are associated as partners for trading, manufacturing, or mining purposes, and no declaration is filed under this Part with regard to such partnership, then any action which might be brought against all the members of the firm may also be brought against any one or more of them, as carrying on or having carried on business jointly with others, without naming such others in the writ, or plaint, or other process, under the name and style of their said partnership or firm; and if judgment be recovered against him or them, any other partner or partners may be sued jointly or severally on the original cause of action on which such judgment is rendered. 2. If any such action be founded on any obligation or instrument in writing in which all or any of the partners bound by it are named, then all the partners named therein shall be made parties to such action, and a judgment rendered against any member of such existing firm for a firm debt or liability, may be executed by process of execution against all and every the firm stock, property, and effects in the same manner and to the same extent as if such judgment had been rendered against such firm.

1894, c. 36, § 72.

Every person trading under firm-name implying plurality of partners to file declaration. 74. Every person who is engaged in business for trading, manufacturing, or mining purposes, and who is not associated in partnership with any other person or persons, but who uses as his business style some name or designation other than his own name, or who in such style used his own name with the addition of "and Company," or some other word or phrase indicating a plurality of members in the firm, shall cause to be delivered to the Registrar of the County Court of the county in which such person carries on or intends to carry on business, a declaration in writing signed by such person.

1894, c. 36, § 73.

What such declaration shall contain. 75. Such declaration shall contain the name, surname, addition, and residence of the person making the same, and the name, style, or firm under which he carries on or intends to carry on business, and shall also state that no other person is associated with him in partnership; and such declaration shall be filed in existing cases within three months of the coming into force of this Act, and in other cases within three months of the time when such style is first used.

1894, c. 36, § 74.

Penalty for breach of this Part. 76. Every member of a firm or other person required to register a declaration under the provisions of this Part, who fails to comply with the requirements of this Part, shall forfeit the sum of one hundred dollars, to be recovered before any Court of competent jurisdiction by any person suing as well in his own behalf as on behalf of Her Majesty; and half of such penalty shall belong to the Crown for the uses of the Province, and the other half to the party suing for the same, unless the action is brought, as it may be, on behalf of the Crown only, in which case the whole of the penalty shall belong to Her Majesty for the uses aforesaid.

1894, c. 36, § 75.

Registrar to enter declaration in Firm Declaration Book. Open to public. Fees, etc. 77. [As amended by 1899, c. 57, § 2.] It shall be the duty of the Registrar to enter all declarations made under this Part in the order in which the same are received in a book to be kept by him for that purpose, to be called the "Firm Declaration Book," which shall at all times during office hours be open to the inspection of the public; and for registering each such declaration the Registrar shall be entitled to receive from the person filing the same the sum of one dollar for the use of the Province, if it does not contain more than two hundred words, and at the rate of twenty cents per hundred words for all above the number of two hundred.

1894, c. 36, § 76.

Registrar to keep index books. 78. It shall be the duty of each Registrar to keep two alphabetical index books of all declarations delivered to him in pursuance of the provisions of this Part.

1894, c. 36, § 77.

What indices to contain. 79. In one of such books, hereinafter called the "Firm Index Book," the Registrar shall enter in alphabetical order the style of the respec-



tive firms, in respect to which declarations have been delivered to him, and shall place opposite such entry the names of the person or persons composing such firm, and the date of the receipt by him of the declaration, in the manner shewn in the form of "Firm Index Book," given in Schedule D to this Act.

1894, c. 36, § 78.

**80.** In the second of such books hereinafter called the "Individual Index Book," the Registrar shall enter in alphabetical order the names of the respective members of each of such firms, and shall place opposite such entry the style of the firm of which such person is a member, and the date of the receipt of the declaration, in the manner shewn in the form of "Individual Index Book," given in Schedule E to this Act.

1894, c. 36, § 79.

**Fees for searching, etc. 81.** The Registrar shall receive the following fees for the use of the Province: For searching in Firm Declaration Book—each declaration, five cents; For searching in Firm Index—each firm ten cents; For searching in Individual Index—each name, ten cents; For each certificate when required, twenty-five cents.

1894, c. 36, § 80.

### *Supplemental.*

**Books to be furnished by Queen's Printer. 82.** All the books required for the purposes of this Act shall be furnished by the Queen's Printer.

1894, c. 36, § 81.

**Rules of equity and common law. 83.** The rules of equity and of common law applicable to partnership shall continue in force, except so far as they are inconsistent with the express provisions of this Act.

1894, c. 36, § 82.

**Not to apply to mining partnerships under Mineral and Placer Mining Acts. 84.** This Act does not apply to mining partnerships within the purview of the *Mineral Act* or of the *Placer Mining Act*.

1894, c. 36, § 84.

**When the Act comes into force. 85.** This Act shall come into operation on the first day of July, one thousand eight hundred and ninety-four.

1894, c. 36, § 85.

### *Schedules.*

#### *Schedule A. Certificate of Limited Partnership.*

We, the undersigned, do hereby certify that we have entered into co-partnership under the style or firm of (B. D. & Co.) as (Grocers and Commission Merchants), which firm consists of (A. B.), residing usually at \_\_\_\_\_, and (C. D.), residing usually at \_\_\_\_\_, as General Partners; and (E. F.), residing usually at \_\_\_\_\_, and (G. H.), residing usually at \_\_\_\_\_ as Special Partners. The said (E. F.) having contributed (\$ 4000) and the said (G. H.) (\$ 8000) to the capital stock of the said partnership.

The said partnership commences on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and terminates on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signed) A. B., C. D., E. F., G. H.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signed in the presence of me, \_\_\_\_\_

(N. P.)

#### *Schedule B. Declaration of Partnership.*

Province of British Columbia,

County of \_\_\_\_\_

We, \_\_\_\_\_ of \_\_\_\_\_ in \_\_\_\_\_ (occupation) and \_\_\_\_\_ of \_\_\_\_\_ in \_\_\_\_\_ (occupation) hereby certify:

1. That we have carried on and intend to carry on trade and business as \_\_\_\_\_ at \_\_\_\_\_ in partnership, under the name and firm of \_\_\_\_\_ (or I, or we), the undersigned, of \_\_\_\_\_ in \_\_\_\_\_ hereby certify that I (or we) have carried on and intend to carry on trade and business as \_\_\_\_\_ at \_\_\_\_\_ in partnership with C. D., of \_\_\_\_\_ and E. F., of \_\_\_\_\_, (as the case may be).

2. That the said partnership has subsisted since the day of \_\_\_\_\_, 19\_\_\_\_.

3. And that we (or I, or we) and the said C. D. and E. F.) are and have been since the said day the only members of the said partnership.

Witness our hands at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

*Schedule C. Declaration of Dissolution of Partnership.*

Province of British Columbia,)

County of

I, \_\_\_\_\_, formerly a member of the firm carrying on business as \_\_\_\_\_, in the County of \_\_\_\_\_, under the style of \_\_\_\_\_, do hereby certify that the said partnership was on the \_\_\_\_\_ day of \_\_\_\_\_ dissolved.

Witness my hand at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

*Schedule D.*

Style of Firm.	Names of Persons Composing the Firm.	Date of Filing Declaration.
Abbott, Black & Co.	George Abbott, John Black, Edward Cook	10th February, 1891.
Bernard, Green & Jones	John Bernard, Edward Green, John Jones	12th February, 1891.
Cook (Thos.) & Co.	Thomas Cook, James Wilson. . . . .	14th February, 1891.
Dadson, William	Wm. Dadson, Thos. Jones, Robt. Watson, etc.	14th February, 1891.
Dick & Co.	Richard Dick. . . . .	15th May, 1892.
Dow (Wm.) & Sons	William Dow. . . . .	19th May, 1892.

*Schedule E.*

Name of Individual.	Style of Firm of which a Member.	Date of Filing Declaration.
Abbott, George	Abbott, Black & Co. . . . .	10th February, 1891.
Black, John	Abbott, Black & Co. . . . .	10th February, 1891.
Bernard, John	Bernard, Green & Jones . . . . .	12th February, 1891.
Cook, Edward	Abbott, Black & Co. . . . .	10th February, 1891.
Cook, Thomas	Thomas Cook & Co. . . . .	14th February, 1891.
Dadson, William	William Dadson . . . . .	14th February, 1891.
Dick, Richard	Dick & Co. . . . .	15th May, 1892.
Dow, William	Wm. Dow & Sons . . . . .	19th May, 1892.

**b) 1899, c. 57. An Act to amend the Partnership Act (27th February, 1899).**

**Short title.** 1. This Act may be cited as the *Partnership Act Amendment Act, 1899*.

[2. Amends R.S. 1897, c. 150, §§ 66 and 77, and is there incorporated.]

**Companies.****a) 1910, c. 7. An Act to revise and consolidate the Companies Act, 1897, and amending Acts (10th March, 1910).<sup>1)</sup>***Short title.*

**Short title.** 1. This Act may be known and cited as the *Companies Act*.

*Interpretation, etc.*

**Interpretation.** 2. [As amended by 1911, c. 8, § 2.] In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say: "Existing company" means a company formed and registered under some former public Ordinance or Act of this Province, except the *Companies Act, 1878*, and the *Companies Act, 1890*; "Company" means a company formed and registered under this Act or an existing company; "Extra-provincial company" means any duly incorporated company other than a company incorporated under the laws

<sup>1)</sup> The references in the notes are to the British Columbia Acts indicated and to (Imp.) the Imperial *Companies (Consolidation) Act, 1908*, (8 Edw. 7, c. 69).



of the Province of British Columbia, or the former Colonies of British Columbia and Vancouver Island; "Articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table A in the first Schedule annexed to the *Companies Act, 1897*, or in that table as altered in pursuance of section 121 of that Act, or in Table A in the first Schedule to this Act, and shall include the by-laws of any existing company, except by-laws made by directors; "Memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of the provisions of this Act; "Charter" of a company shall mean the Act, Statute, Ordinance, or other provision of law by or under which the company is incorporated, and any amendments thereto applying to such company, whether of this or of any other Province, or of the Dominion of Canada, or of the United Kingdom, or of any colony or dependency thereof, or of any foreign state or country, the memorandum of association, or agreement, or deed of settlement of the company, and the letters patent or charter of incorporation, and the licence or certificate of registration of the company, as the case may be; "Charter and regulations" of a company shall mean the charter of the company and the articles of association, and all by-laws, rules, and regulations of the company, and all resolutions and contracts relating to or affecting the capital and assets of the company; "Document" includes summons, notice, order, and other legal process and registers; "Share" means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied; "Debenture" includes debenture stock; "Books and papers" and "books or papers" include accounts, deeds, writings, and documents; "The Registrar of Companies," or, when used in relation to registration of companies, "the Registrar" means the Registrar of Joint-Stock Companies or other officer performing under this Act the duty of registration of companies; "The Court," used in relation to a company, means the Supreme Court of British Columbia; "The Gazette" means the *British Columbia Gazette*; "General rules" means general rules made under this Act, and includes forms; "Prescribed" means prescribed by general rules or by the Lieutenant-Governor in Council or other lawful authority; "Director" includes any person occupying the position of director by whatever name called; "Prospectus" means any prospectus, notice, circular, advertisement, or other document offering to the public for subscription or purchase any shares or debentures of a company; "Real estate" or "land" shall include all messuages, lands, tenements, leaseholds, and hereditaments of any tenure, and all immoveable property of every kind; "Shareholder" shall mean every subscriber to or holder of shares in a company, and extend to and include the personal representatives of such shareholder; "Subscriber" shall mean any person who subscribes for shares in the memorandum of association of a company; "Company limited by shares" shall include a company incorporated under Part V. of this Act. In addition to the above, the following words are defined in the Act: "Company" Secs. 129, 171; "Contributory" Sec. 180; "Deed of Settlement" Sec. 284 (4); "Expert" Sec. 92; "Joint-stock company" 272; "Member" Sec. 32; "Minimum subscription" Sec. 93; "Private company" Sec. 130; "Promoter" Sec. 92; "Registered office" Sec. 70; "Special and extraordinary resolution" Sec. 77; "Statutory meeting" Sec. 73 (1); "Statutory report" Sec. 73 (2); "Vendor" Sec. 90.

Imp. § 285.

#### *Division of Act.*

3. This Act is divided into twelve parts, relating to the following subjects: Part I. Preliminary; Part II. Constitution and Incorporation; Part III. Distribution and Reduction of Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors; Part IV. Management and Administration; Part V. Incorporation of Mining Companies without any Personal Liability<sup>1</sup>); Part VI. Licensing and Registration of Extra-Provincial Companies; Part VII. Process against Unregistered Extra-Provincial Companies; Part VIII. Winding-Up; Part IX. Registration Office and Fees; Part X. Application of Act to Companies formed and Registered under former Companies Acts; Part XI. Companies authorised to Register under this Act; Part XII. Miscellaneous and Supplemental.

<sup>1</sup>) Not reprinted herein.

### *Part I. Preliminary.*

**Powers of Lieut.-Governor in Council. Appointment of Registrar and Deputy Registrar of Companies. Rules. Alterations in forms.** 4. The Lieutenant-Governor in Council, from time to time, may: a) Appoint such persons as he shall think proper to act as Registrar or Deputy Registrar of Joint-Stock Companies; b) By Order in Council, make and establish such general rules and orders, not inconsistent with this Act, as may appear necessary or expedient for the purpose of giving full effect to the provisions of this Act, or any of them, and for prescribing the course to be adopted in the course of official business under this Act. All such general rules and orders shall, after the making thereof, be published in the *Gazette*, and shall thereupon have the force of law, until amended, altered, or revoked; c) Make such alterations in the tables and forms contained in the first Schedule hereto, so that it does not increase the amount of fees payable to the Registrar in the said Schedule mentioned, and in the forms in the second Schedule, or make such additions to the last-mentioned forms as may be requisite. Any such table or form when altered shall be published in the *Gazette*, and upon such publication made such table or form shall have the same force as if it were included in the Schedule to this Act; but no alteration made by the Lieutenant-Governor in Council in the table marked A, contained in the first Schedule, shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of that table.

R. S., B. C., c. 44, §§ 3, 121; Imp. § 118.

**Registrar's duty to enforce compliance.** 5. It shall be the duty of the Registrar to enforce compliance with the several provisions, regulations, and stipulations in this Act contained, or in any regulations made thereunder, but such duty shall not affect the right of any other person to compel compliance with the provisions hereof.

R. S., B. C., c. 44, § 2.

**Forms to be used.** 6. The forms set forth in the second Schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer.

**Railway and insurance companies not to be incorporated.** 7. No company shall be incorporated under this Act for the construction and working of railways or the business of insurance.

**Definition of insurance company.** 8. For the purposes of this Act, a company that carries on the business of fire, life, marine, or other insurance in common with any other business shall be deemed to be an insurance company.

R. S., B. C., c. 44, § 6.

**Prohibition of partnership exceeding a certain number.** 9. No company, association, or partnership, consisting of more than twenty persons, shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act, or of letters patent.

R. S., B. C., c. 44, § 7; Imp. § 1.

**Issue of bank notes prohibited.** 10. Nothing in this Act shall be construed to authorise a company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money or as the note of a bank, or to engage in the business of banking.

R. S., B. C., c. 44, § 27.

**Act does not apply to certain companies.** 11. [As amended by 1911, c. 8, § 3.] This Act shall not apply to: a) The Governor and Company of Adventurers of England trading into Hudson's Bay; b) Companies specially incorporated in pursuance of Part VI. of the *Water Clauses Consolidation Act, 1897*; c) A company that carries on the business of fire insurance only.

1899, c. 15, § 3.

### *Part II. Constitution and Incorporation.*

#### *Memorandum of association.*

**Mode of forming incorporated company.** 12. Any five or more persons (or, where the company to be formed will be a private company within the meaning



of this Act, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability, that is to say, either: a) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or b) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or c) A company not having any limit on the liability of its members (in this Act termed an unlimited company); or d) A company having the liability of its members specially limited under section 131.

R. S., B. C., c. 44, § 9; Imp. § 2. *Quære*, whether a company authorized to enter into contracts for the purposes of its business may enter into an agreement with an individual to amalgamate the business theretofore carried on separately by the two concerns and to divide the profits. — *Roedde v. News-Advertiser Publishing Co.*, (1894), 4 B. C. 7. The shareholders may ratify a mortgage made by the directors of a company prior to such consent, where without such consent there was no power to borrow. — *Adams v. Bank of Montreal*, (1899), 8 B. C. 314.

**Memorandum of company limited by shares. 13.** In the case of a company limited by shares: 1. The memorandum must state: a) The name of the company, with "Limited" as the last word in its name; b) The city, town, district, or county in which the registered office of the company is to be situate; c) The objects of the company; d) That the liability of the members is limited; e) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount. 2. No subscriber of the memorandum may take less than one share. 3. Each subscriber must write opposite to his name the number of shares he takes.

R. S., B. C., c. 44, § 11; Imp. § 3.

**Memorandum of company limited by guarantee. 14.** In the case of a company limited by guarantee: 1. The memorandum must state: a) The name of the company, with "Limited" as the last word in its name; b) The city, town, district, or county in which the registered office of the company is to be situate; c) The objects of the company; d) That the liability of the members is limited; e) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount. 2. If the company has a share capital: a) The memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount; b) No subscriber of the memorandum may take less than one share; c) Each subscriber must write opposite to his name the number of shares he takes.

R. S., B. C., c. 44, § 12; Imp. § 4.

**Memorandum of unlimited company. 15.** In the case of an unlimited company: 1. The memorandum must state: a) The name of the company; b) The city, town, district, or county in which the registered office of the company is to be situate; c) The objects of the company. 2. If the company has a share capital: a) No subscriber of the memorandum may take less than one share; b) Each subscriber must write opposite to his name the number of shares he takes.

R. S., B. C., c. 44, § 13; Imp. § 5.

**Execution of memorandum. 16.** The memorandum must be signed by each subscriber in the presence of at least one witness, who must attest the signature.

R. S., B. C., c. 44, § 14; Imp. § 6.

**Restriction on alteration of memorandum. 17.** A company may not alter the conditions contained in its memorandum, except in the cases and in the mode and to the extent for which express provision is made in this Act.

R. S., B. C., c. 44, § 15; Imp. § 7.

**Name of company and change of name. 18.** [As amended by 1911, c. 8, §§ 4, 5.] 1. A company or society may not be incorporated nor may an extra-provincial company be licensed or registered by a name identical with that by which a company or society or firm in existence is carrying on business or has been incorporated, licensed, or registered, or so nearly resembling that name as in the opinion of the

Registrar to be calculated to deceive, except where such company or society or firm in existence is in the course of being dissolved or has ceased to carry on business, and signifies its consent by resolution duly passed and filed with the Registrar. 2. Any company or society that has, through inadvertence or otherwise, become incorporated, licensed, or registered by a name identical with that by which a company or society or firm has been incorporated, licensed, or registered, or has been carrying on business prior to the incorporation, licensing, or registration of such first-mentioned company or society, or so nearly resembling that name as to be calculated to deceive, shall change its name in manner provided by this section: Provided that this amendment shall not affect litigation now pending in regard to the name of any company. 3. Any company may also at any time, by special resolution and with the approval of the Registrar of Companies signified in writing, change its name. 4. The company shall, in the last-mentioned case, give at least one month's previous continuous notice in the *Gazette*, and in some newspaper published or circulated in the locality in which the operations of the company are carried on, of the intention to apply for the change of name, and shall state the name proposed to be adopted. 5. Where a company changes its name, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate that such company has changed its name, and in such certificate the Registrar shall state the name by which such company shall as from the date of such certificate be known. 6. The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name. 7. The Registrar may, on request, reserve any name which may be taken by an intended company as a change of name, or the name of any extra-provincial company intending to apply for a licence or registration, for a period of fourteen days or any extended period he may allow, not exceeding in the whole thirty days.

R. S., B. C., c. 44, § 82 (2); Imp. § 8. The names "The Canada Permanent Loan and Savings Company" and "The British Columbia Permanent Loan & Savings Company" are not so similar as to be calculated to deceive. — *Canada Permanent v. British Columbia Permanent*, (1898), 6 B. C. 377. The opinion of a registrar as to the similarity of names is not conclusive under the *Investment and Loan Societies Amendment Act, 1898*. — *British Columbia, etc., Co. v. Wootton*, (1898), 6 B. C. 382.

**Alteration of objects of company. 19.** 1. Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it: a) To carry on its business more economically or more efficiently; or b) To attain its main purpose by new or improved means; or c) To enlarge or change the local area of its operations; or d) To carry on some business which, under existing circumstances, may conveniently or advantageously be combined with the business of the company; or e) To restrict or abandon any of the objects specified in the memorandum. 2. The alteration shall not take effect until and except in so far as it is confirmed on petition by the Court. 3. Before confirming the alteration the Court must be satisfied: a) That sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and b) That, with respect to every creditor who, in the opinion of the Court, is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court: Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section. 4. The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper. 5. The Court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no



part of the capital of the company may be expended in any such purchase. 6. An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the Registrar of Companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company. The Court may by order at any time extend the time for the delivery of documents to the Registrar under this section for such period as the Court may think proper. 7. The Registrar shall cause the certificate, together with a statement of the objects of the company, as altered, to be published at the expense of the company for four weeks in the *Gazette*. 8. If a company makes default in delivering to the Registrar of Companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding fifty dollars for every day during which it is in default.

R. S., B. C., c. 44, § 21; Imp. § 9.

#### *Articles of association.*

**Registration of articles. 20.** [As amended by 1911, c. 8, § 6.] 1. There may, in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company. 2. A company may by its articles of association adopt all or any of the regulations contained in Table A in the first Schedule to this Act. 3. In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, must state the amount of share capital with which the company purposes to be registered. 4. In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

R. S., B. C., c. 44, § 16; Imp. § 10.

**Application of Table A. 21.** In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the first Schedule to this Act, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

R. S., B. C., c. 44, § 17; Imp. § 11.

**Form and signature of articles. 22.** [As amended by 1911, c. 8, § 7.] Articles must: a) Be printed or typewritten; b) Be divided into paragraphs numbered consecutively; c) Be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

R. S., B. C., c. 44, §§ 16, 18; Imp. § 12.

**Alteration of articles by special resolution. 23.** 1. Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution. 2. The power of altering articles under this section shall, in the case of an unlimited company, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

R. S., B. C., c. 44, § 99; Imp. § 13.

#### *General provisions.*

**Effect of memorandum and articles. 24.** 1. The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member, his heirs, executors, and administrators, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act. 2. All money payable by any member to the

company under the memorandum or articles shall be a debt due from him to the company of the nature of a specialty debt.

R. S., B. C., c. 44, § 16; Imp. § 14. As to liability of promoters for debts incurred in the promotion of a company which is not registered, see *Hung Man v. Ellis*, (1895), 3 B. C. 486.

**Registration of memorandum and articles.** 25. The memorandum and the articles (if any) shall be delivered to the Registrar of Companies, and he shall retain and register them.

R. S., B. C., c. 44, § 19; Imp. § 15.

**Contents of certificate of registration. Publication of certificate.** 26. [As amended by 1911, c. 8, § 8.] 1. On the registration of the memorandum of a company the Registrar shall issue a certificate under his seal of office, showing: a) That the company is incorporated; b) The amount of its capital (if any); c) The number of shares into which it is divided; d) In the case of a limited company, that the company is limited; e) In the case of a mining company incorporated with non-personal liability, that the liability of the company and the shareholders therein is specially limited under Part V; the place where the head office of the company is situate. 2. From the date of incorporation mentioned in the certificate of incorporation the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act. 3. The Registrar shall, at the cost of the parties applying for registration of a memorandum of association, publish the certificate of incorporation and a statement showing the objects for which the company named in the certificate has been incorporated, for four weeks in the *Gazette*.

R. S., B. C., c. 44, § 20; 1900, c. 5, § 4; Imp. § 16.

**Conclusiveness of certificate of incorporation.** 27. 1. A certificate of incorporation given by the Registrar in respect of any company shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act. 2. A statutory declaration by a solicitor of the Supreme Court engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the Registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance.

R. S., B. C., c. 44, § 20; Imp. § 17.

**Copies of memorandum and articles to be given to members.** 28. 1. Every company shall send to every member, at his request, and on payment of one dollar or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any). 2. If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding five dollars.

R. S., B. C., c. 44, § 23; Imp. § 18.

#### *Companies limited by guarantee.*

**Provisions as to companies limited by guarantee.** 29. 1. In the case of a company limited by guarantee and not having a share capital, and registered after the passing of this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void. 2. For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered on or after the passing of this Act, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

Imp. § 21.



*Part III. Distribution and Reduction of Share Capital. Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.*

*Distribution of share capital.*

**Nature of shares. Numbering shares. 30.** 1. The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate. 2. Each share in a company having a share capital shall be distinguished by its appropriate number.

R. S., B. C., c. 44, § 31; Imp. § 22. The owner of shares in a company is not an owner of any part of a mining claim owned by the company. — *Granger v. Fotheringham*, (1894), 3 B. C. 590. Where shares are purchased and paid for by a promissory note, and the shares are placed in escrow in a bank to be delivered up on payment of the note, the purchaser becomes the owner of the shares, and formal notice of allotment is not necessary. — *Anglo-American Lumber Co. v. McLellan*, (1908), 13 B. C. 318; affirmed, (1908), 14 B. C. 93.

**Certificate of shares or stock as evidence of title. 31.** A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the member to the shares or stock.

R. S., B. C., c. 44, § 43; Imp. § 23.

**Definition of member. 32.** 1. The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members. 2. Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

R. S., B. C., c. 44, § 30; Imp. § 24.

**Register of members. 33.** 1. Every company shall keep in one or more books a register of its members, and enter therein the following particulars: a) The names and addresses and the occupations (if any) of the members, and in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member; b) The date at which each person was entered in the register as a member; c) The date at which any person ceased to be a member. 2. If a company fails to comply with this section it shall be liable to a fine not exceeding twenty-five dollars for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

R. S., B. C., c. 44, § 36; Imp. § 35.

**Annual list of members and summary. 34.** 1. Every company having a share capital shall once at least in every year make a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company. 2. The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars: a) The amount of the share capital of the company, and the number of the shares into which it is divided; b) The number of shares taken from the commencement of the company up to the date of the return; c) The amount called up on each share; d) The total amount of calls received; e) The total amount of calls unpaid; f) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return; g) The total number of shares forfeited; h) The total amount of shares or stock for which share warrants are outstanding at the date of the return; i) The total amount of share warrants issued and surrendered respectively, since the date of the last return; j) The number of shares or amount of stock comprised in each share warrant; k) The names and addresses of the persons who at the date of the return are the directors of the company, or occupy the position of directors,

by whatever name called; and 1) The total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the Registrar of Companies under this Act. 3. The summary must also (except where the company is a private company) include a statement, made up to such date as may be specified in the statement, in the form of a balance sheet, audited by the company's auditors, and containing a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of those liabilities and assets, and how the values of the fixed assets have been arrived at, but the balance sheet need not include a statement of profit and loss. 4. The above list and summary must be contained in a separate part of the register of members, and must be completed within seven days after the fourteenth day aforesaid, and the company must forthwith forward to the Registrar of Companies a copy signed by the manager, the secretary or by some other officer of the company. 5. If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding twenty-five dollars for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

R. S., B. C., c. 44, §§ 36, 37; Imp. § 26.

**Trusts not to be entered on register.** 35. No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies registered pursuant to this Act.

R. S., B. C., c. 44, § 41; Imp. § 27.

**Registration of transfer at request of transferor.** 36. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

R. S., B. C., c. 44, § 34; Imp. § 28.

**Transfer by personal representative.** 37. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

R. S., B. C., c. 44, § 32; Imp. § 29.

**Executors and pledgors voting.** 38. Every executor, administrator, guardian, or trustee shall represent the shares or stock in his hands at all meetings of the company, and may vote accordingly as a shareholder; and every person who pledges his stock may nevertheless represent the same at all such meetings, and may vote accordingly as a shareholder.

R. S., B. C., c. 44, § 33.

**Trustees, etc.** 39. No person holding shares, stock or other interest in the company as executor, administrator, guardian, or trustee shall be personally subject to liability as a shareholder; but the estates and funds in the hands of such person shall be liable in like manner and to the same extent as the testator or intestate or the minor, ward, or person interested in the trust fund would be if living and competent to act and holding such shares, stock, or other interest in his own name.

R. S., B. C., c. 44, § 52.

**Non-personal liability of mortgagee or pledgee of shares.** 40. No person holding shares, stock, or other interest as collateral security shall be personally subject to liability as a shareholder; but the person pledging such shares, stock, or other interest as such collateral security shall be considered as holding the same, and shall be liable as a shareholder in respect thereof.

R. S., B. C., c. 44, § 53.

**Inspection of register of members.** 41. 1. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of twenty-five cents, or such less sum as the company may prescribe, for each inspection. 2. Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary re-



quired by this Act, or any part thereof, on payment of twenty-five cents, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied. 3. If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding ten dollars, and to a further fine not exceeding ten dollars for every day during which the refusal continues, and every director and manager of the company who knowingly authorises or permits the refusal shall be liable to the like penalty; and any Judge of the Supreme Court may by order compel an immediate inspection of the register.

R. S., B. C., c. 44, § 44; Imp. § 30.

**Power to close register.** 42. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

R. S., B., C. c. 44, § 45; Imp. § 31.

**Power of Court to rectify register.** 43. 1. If: a) The name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or b) Default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member, the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register. 2. The application may be made to a Judge of the Supreme Court sitting in Chambers; and the Court may either refuse the application, or may direct rectification of the register, and payment by the company of any damages sustained by any party aggrieved. 3. On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register. 4. In the case of a company required by this Act to send a list of its members to the Registrar of Companies the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

R. S., B. C., c. 44, §§ 47, 48; Imp. § 32. For a case where under circumstances it was held that a shareholder was not guilty of laches in causing the removal of his name from the register of members, see *Ex parte Bibby, In re Enterprise, etc., Co.*, (1884), 1 B. C. II. 94. Where a shareholder acquiesces in a forfeiture of shares for non-payment of calls he can not thereafter set up a claim for such shares. — *Jones v. North Vancouver, etc., Co.*, (1908), 14 B. C. 285.

**Register to be evidence.** 44. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

R. S., B. C., c. 44, § 49; Imp. § 33.

**Issue and effect of share warrants to bearer.** 45. 1. A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share warrant. 2. A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant. 3. The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled. 4. The bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles; except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles. 5. On the issue of a share warrant the company shall strike out of the register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be

a member, and shall enter in the register the following particulars, namely: a) The fact of the issue of the warrant; b) A statement of the shares or stock included in the warrant, distinguishing each share by its number; and c) The date of the issue of the warrant. 6. Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender must be entered as if it were the date at which a person ceased to be a member.

R. S., B. C., c. 44, §§ 65, 70; Imp. § 37.

**Power of company to arrange for different amounts being paid on shares. 46.** A company, if so authorised by its articles, may do any one or more of the following things, namely: 1. Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares; 2. Accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up; 3. Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

R. S., B. C., c. 44, § 62; Imp. § 39. Where a company in pursuance of a power in its memorandum of association increases its capital, and issues shares for the increased amount to the original shareholders, and falsely marks the new shares as fully paid up, upon the winding-up of the company the shareholders who had not repudiated the transaction before the winding-up commenced, are liable as contributories, although the resolution authorizing the increase of capital was not a special resolution as required by law. — *In re Thunder Hill Mining Company*, (1895), 4 B. C. 61. Where a portion of the shares in a company purporting to be fully paid and non-assessable shares is sold by one of the promoters to a person who is unaware that the shares were originally issued at a discount, the purchaser is not liable for the difference between the face value of the shares and the amount actually paid for them, although the transfer was at the instance of the seller made directly from the company to the purchaser. — *Kettle River Mines v. Bleasdel*, (1900), 7 B. C. 507. Where a company is formed to take over the business of a partnership, and the partners receive a number of fully paid-up shares at par in satisfaction of their claims, the transaction does not amount to a payment in cash nor can the debt owing to the partners as the price of the business be set off against their liability on the shares. — *Turner v. Cowan*, (1903), 34 S. C. R. 160, reversing s. c., (1902), 9 B. C. 301, (1903), 9 B. C. 354.

**Power to return accumulated profits in reduction of paid-up share capital. 47.** 1. When a company has accumulated a sum of undivided profits, which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount. 2. The resolution shall not take effect until a memorandum, showing the particulars required by this Act in the case of a reduction of share capital, has been produced to and registered by the Registrar of Companies, but the other provisions of this Act with respect to reduction of share capital shall not apply to a reduction of paid-up share capital under this section. 3. On a reduction of paid-up capital in pursuance of this section any shareholder, or any one or more of several joint shareholders, may within one month after the passing of the resolution for the reduction, require the company to retain, and the company shall retain accordingly, the whole of the money actually paid on the shares held by him either alone or jointly with any other person, which, in consequence of the reduction, would otherwise be returned to him or them, and thereupon those shares shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the company shall invest and keep invested the money so retained in such securities authorised for investment by trustees as the company may determine, and on the money so invested or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the company shall pay the interest received from time to time on the securities. 4. The amount retained and invested shall be held to represent the future calls which may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of the call. 5. On a reduction of paid-up share capital in pursuance of this section, the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as augmented by the reduction.



6. After any reduction of share capital under this section the company shall specify in the annual list of members required by this Act the amounts retained at the request of any of the shareholders in pursuance of this section, and shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this section.

Imp. § 40.

**Power of company limited by shares to alter its share capital.** 48. 1. A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows that is to say, it may: a) Increase its share capital by the issue of new shares of such amount as it thinks expedient; b) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares; c) Convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination; d) Subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; e) Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. 2. The powers conferred by this section with respect to subdivision of shares must be exercised by special resolution. 3. Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration. If a company makes default in complying with this provision it shall be liable to a fine not exceeding five dollars for each copy in respect of which default is made; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty. 4. A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

R. S., B. C., c. 44, § 15; Imp. § 41.

**Notice to Registrar of consolidation of share capital, conversion of shares into stock, etc.** 49. Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares into stock, or reconverted stock into shares, it shall give notice to the Registrar of Companies of the consolidation, division, conversion, or reconversion specifying the shares consolidated, divided, or converted, or the stock reconverted.

R. S., B. C., c. 44, § 39; Imp. § 42.

**Effect of conversion of shares into stock.** 50. Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the Registrar of Companies, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

R. S., B. C., c. 44, § 40; Imp. § 43.

**Notice of increase of share capital or of members.** 51. 1. Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall give to the Registrar of Companies, in the case of an increase of share capital, within fifteen days after the passing, or in the case of a special resolution the confirmation, of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the Registrar shall record the increase. 2. If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding twenty-five dollars for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

R. S., B. C., c. 44, § 46; Imp. § 44.

**Reorganisation of share capital. 52.** 1. A company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes: Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class. 2. Where an order is made under this section an office copy thereof shall be filed with the Registrar of Companies within seven days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed.

Imp. § 45.

*Reduction of share capital.*

**Special resolution for reduction of share capital. 53.** 1. Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may: a) Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or b) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or c) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly. 2. A special resolution under this section is in this Act called "a resolution for reducing share capital."

R. S., B. C., c. 44, § 71; Imp. § 46.

**Application to Court for confirming order. 54.** Where a company has passed and confirmed a resolution for reducing share capital it may apply to the Court for an order confirming the reduction.

R. S., B. C., c. 44, § 73; Imp. § 73.

**Addition to name of company of "and reduced." 55.** On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the Court may fix, the words "and reduced," as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company: Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

R. S., B. C., c. 44, § 73; Imp. § 48.

**Objections by creditors, and settlement of list of objecting creditors. 56.** 1. Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction. 2. The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction. 3. Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct,



the following amount, that is to say: a) If the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim; b) If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

R. S., B. C., c. 44, §§ 74, 75; Imp. § 49.

**Order confirming reduction. 57.** The Court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

R. S., B. C., c. 44, § 73, Imp. § 50.

**Registration of order and minute of reduction. 58.** 1. The Registrar of Companies on production to him of an order of the Court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute. 2. On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect. 3. Notice of the registration shall be published in such manner as the Court may direct. 4. The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

R. S., B. C., c. 44, § 76; Imp. § 51.

**Minute to form part of memorandum. 59.** 1. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein; and must be embodied in every copy of the memorandum issued after its registration. 2. If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five dollars for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

R. S., B. C., c. 44, § 77; Imp. § 52.

**Liability of members in respect of reduced shares. 60.** A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount (if any) which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute: Provided that if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding-up by the Court, to pay the amount of his debt or claim, then: a) Every person who was a member of the company at the date of the registration of the order for reduction and minute shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and b) If the company is wound up, the Court, on the application of any such creditor, and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding-up. Nothing in this section shall affect the rights of the contributories among themselves.

R. S., B. C., c. 44, § 78; Imp. § 53.

**Concealing name of creditor entitled to object.** 61. If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall, for every such violation of this Act, upon summary conviction, be liable to a penalty not exceeding five hundred dollars.

Imp. § 54.

**Publication of reasons for reduction.** 62. In any case of reduction of share capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and if the Court thinks fit, the causes which led to the reduction.

Imp. § 55.

**Increase and reduction of share capital in case of a company limited by guarantee having a share capital.** 63. A company limited by guarantee and registered after the passing of this Act may, if it has a share capital and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

Imp. § 56.

*Reduction of capital by limited companies.*

**Certain land companies empowered to pay dividends out of the net proceeds of sales of land.** 64. 1. It shall be lawful for companies incorporated under this or any former Act of this Province, whose principal and main business is to acquire tracts of land with the object of subdividing the same into lots and selling such lots when so subdivided as aforesaid, to declare and pay dividends out of the moneys being the net proceeds of the sale of their lands so subdivided as aforesaid; and all such dividends and payments shall be taken and considered as a reduction of the capital of such company: Provided such companies have paid all debts legally owing by them, or have made ample provision for the payment of the same, testified by a statutory declaration made by the secretary of the company, who shall also exhibit and file with the Registrar a full, true, and correct account of the liabilities and assets of the company. 2. A resolution passed by the shareholders holding at least two-thirds in value of the paid-up capital stock of the company, at any general meeting of shareholders, shall be necessary for the declaration and payment of such dividends; and such resolution shall only be passed after the expiration of ten days from the filing of the statutory declaration hereinbefore required to be filed with the Registrar. 3. A copy of every such resolution, under the seal of the company, and certified to by the secretary of the company, shall be filed in the office of the Registrar within ten days after the passing of the resolution, and ten days shall elapse after the filing thereof before payment out of any such dividends to the shareholders shall be made. 4. After the filing of every such resolution with the Registrar, the said Registrar shall, by a notice published in four issues of the *Gazette*, declare to what sum the capital of any such company, by such payment of dividends, stands reduced; and the company shall pay the Registrar the costs of such publication.

1900, c. 5, § 14.

*Registration of unlimited company as limited.*

**Registration of unlimited company as limited.** 65. 1. Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of the company before the registration, and those debts, liabilities, obligations, and contracts may be enforced in manner provided by Part XI. of this Act in the case of a company registered in pursuance of that Part. 2. On registration in pursuance of this section the Registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration



of the company under this Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts from those under which the company is registered as a limited company.

Imp. § 57.

**Power of unlimited company to provide for reserve share capital on registration.**

**66.** An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely: a) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up; b) Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Imp. § 58.

*Reserve liability of limited company.*

**Reserve liability of limited company. 67.** A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Imp. § 59.

*Unlimited liability of directors.*

**Limited company may have directors with unlimited liability. 68.** 1. In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited. 2. In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company (if any), and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary (if any) of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited. 3. If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager, or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding five hundred dollars, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Imp. § 60.

**Special resolution of limited company making liability of directors unlimited.**

**69.** 1. A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director. 2. Upon the confirmation of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum; and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution. 3. If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding five dollars for each copy in respect of which default is made; and every director or manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Imp. § 61.

*Part IV. Management and Administration.*

*Office and name.*

**Registered office of company. 70.** 1. Every company shall have a registered office to which all communications and notices may be addressed. 2. Notice of the situation of the registered office, and of any change therein, shall be given to the Registrar of Companies, who shall record the same. 3. If a company carries on business without complying with the requirements of this section it shall be liable to a fine not exceeding twenty-five dollars for every day during which it so carries on business.

R. S., B. C., c. 44, §§ 84, 85; Imp. § 62.

**Publication of name by a limited company. 71.** 1. Every limited company: a) Shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible; b) Shall have its name engraven in legible characters on its seal; c) Shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company. 2. If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding twenty-five dollars for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty. 3. If any director, manager, or officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable, upon summary conviction, to a fine not exceeding two hundred and fifty dollars, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

R. S., B. C., c. 44, §§ 86, 87; Imp. § 63.

#### *Meetings and proceedings.*

**Annual general meeting. 72.** 1. A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting, and if not so held, the company and every director, manager, secretary, and other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding two hundred and fifty dollars. 2. When default has been made in holding a meeting of the company in accordance with the provisions of this section, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company. 3. Every general meeting of the company shall be held within the Province of British Columbia.

Imp. § 64. The ordinary management of the company is in the hands of the officers. The shareholders have no power to interfere in the ordinary management of the company. — *Dunsmuir v. Colonist Publishing Co.*, (1902), 9 B. C. 290.

**First statutory meeting of the company. 73.** 1. Every company limited by shares and registered after the passing of this Act shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting. 2. The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it. 3. The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state: a) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted; b) The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid; c) An abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate



of the preliminary expenses of the company; d) The names, addresses, and descriptions of the directors, auditors (if any), managers (if any) and secretary of the company; and e) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification. 4. The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company. 5. The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the Registrar of Companies forthwith after the sending thereof to the members of the company. 6. The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting. 7. The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed. 8. The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting. 9. If a petition is presented to the Court in manner provided by Part VIII. of this Act for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just. 10. The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

Imp. § 65.

**Convening of extraordinary general meeting on requisition.** 74. 1. Notwithstanding anything in the articles of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company. 2. The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists. 3. If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit. 4. If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting. 5. Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

1903—4, c. 12, § 2; Imp. § 66.

**Provisions as to meetings and votes.** 75. In default of, and subject to, any regulations in the articles: a) A meeting of a company may be called by seven days' notice in writing, served on every member in manner in which notices are required to be served by Table A in the first Schedule to this Act; b) Five members may call a meeting; c) Any person elected by the members present at a meeting may be chairman thereof; d) Every member shall have one vote in respect of each share held by him.

R. S., B. C., c. 44, § 101; Imp. § 67. *Seemle*, a minority of shareholders can not be given the right to elect a majority of directors. — *Colonist Publishing Co. v. Dunsmuir*, (1902), 32 S. C. R. 679, reversing *Dunsmuir v. Colonist Publishing Co.*, (1902), 9 B. C. 275.

**Representation of companies at meetings of other companies of which they are members.** 76. A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

R. S., B. C., c. 44, § 101; Imp. § 68.

**Definitions of extraordinary and special resolution.** 77. 1. A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote, as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given. 2. A resolution shall be a special resolution when it has been: a) Passed in manner required for the passing of an extraordinary resolution; and b) Confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting. 3. At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. 4. At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles. 5. When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company. 6. For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

R. S., B. C., c. 44, § 101; Imp. § 69. See notes to § 46, *supra*.

**Registration and copies of special resolutions.** 78. [As amended by 1911, c. 8, §§ 9, 10.] 1. A copy of every special and extraordinary resolution duly authenticated as in section 126 of this Act provided shall within fifteen days from the confirmation of the special resolution, or from the passing of the extraordinary resolution, as the case may be, be filed with the Registrar of Companies. 2. Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution. 3. Where articles have not been registered, a copy of every special resolution shall be forwarded to any member at his request, on payment of twenty-five cents, or such less sum as the company may direct. 4. If a company makes default in forwarding a copy of a special or extraordinary resolution to the Registrar it shall be liable to a fine not exceeding ten dollars for every day during which the default continues. 5. If a company makes default in embodying in or annexing to a copy of its articles or in forwarding to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding five dollars for each copy in respect of which default is made. 6. Every director and manager of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

R. S., B. C., c. 44, §§ 102, 103; Imp. § 70.

**Minutes of proceedings of meetings and directors.** 79. 1. Every company shall cause minutes of all proceedings of general meetings and (where there are directors or managers) of its directors or managers to be entered in books kept for that purpose. 2. Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings. 3. Until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect



of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators, shall be deemed to be valid.

R. S., B. C., c. 44, § 113; Imp. § 71.

*Appointment, qualification, etc., of directors.*

**Restrictions on appointment or advertisement of director.** 80. 1. A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company, unless, before the registration of the articles or the publication of the prospectus, as the case may be, he has by himself or by his agent authorised in writing: a) Signed and filed with the Registrar of Companies a consent in writing to act as such director; and b) Either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the Registrar a contract in writing to take from the company and pay for his qualification shares (if any). 2. On the application for registration of the memorandum and articles of a company the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding two hundred and fifty dollars. 3. This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

Imp. § 72. Statements made by officers of a company may be admissible against the company without proof of express authorization. — *Varrelmann v. Phoenix Brewing Company*, (1894), 3 B. C. 135. As to liability of company for tortious acts of its servants or agents, see *Harris v. Brunette Saw Mill Co.*, (1893), 3 B. C. 172. Directors occupy a fiduciary position, and they are bound to exercise their powers with a view to the advantage of the company. — *Madden v. Dimond*, (1906), 12 B. C. 80. They have no power to appoint one of their own number as managing director, and to fix his remuneration. — *Claudet v. Golden Giants Mines*, (1909), 15 B. C. 13.

**Qualification of director.** 81. 1. Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company. 2. The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification. 3. If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding twenty-five dollars for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

Imp. § 72.

**Validity of acts of directors.** 82. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Imp. § 74.

**List of directors to be sent to Registrar.** 83. 1. Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and send to the Registrar of Companies a copy thereof, and from time to time notify to the Registrar any change among its directors or managers. 2. If default is made in compliance with this section, the company shall be liable to a fine not exceeding twenty-five dollars for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

R. S., B. C., c. 44, §§ 89, 90; Imp. § 75.

*Contracts, etc.*

**Form of contracts. 84.** 1. Contracts on behalf of a company may be made as follows, that is to say: a) Any contract which if made between private persons would be by law required to be in writing, and if made according to the law of this Province or of the Dominion of Canada to be under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged; b) Any contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged; c) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged. 2. All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors, or administrators, as the case may be.

R. S., B. C., c. 44, § 25; Imp. 76. A person dealing with a company in the ordinary course of business is not bound to inquire into the regularity of the proceedings of the directors or other matters relating to the internal administration of the company. A shareholder in dealing with a company in which he holds shares is in this respect in the same position as a stranger. — *Jackson v. Cannon*, (1902), 10 B. C. 73. *Semble*, a contract dealing with a subject within the scope of the objects of the company need not ordinarily be under seal. — *Canadian Pacific Navigation Co. v. Victoria Packing Co.*, (1889), 3 B. C. 490.

**Bills of exchange and promissory notes. 85.** A bill of exchange or promissory note shall be deemed to have been made, accepted, or indorsed on behalf of a company if made, accepted, or indorsed in the name of, or by, or on behalf or on account of, the company by any person acting under its authority.

R. S., B. C., c. 44, § 26; Imp. § 77.

**Contracts generally, when made by company, etc. 86.** Every contract, agreement, engagement, or bargain made, and every bill of exchange drawn, accepted, or indorsed, and every promissory note and cheque made, drawn, or indorsed on behalf of the company by any agent, officer, or servant of the company, in general accordance with his powers as such under the regulations of the company, shall be binding upon the company; and in no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note, or cheque, or to prove that the same was made, drawn, accepted, or indorsed, as the case may be, in pursuance of any regulations or special resolution or order; nor shall the party so acting as agent, officer, or servant of the company be thereby subjected individually to any liability whatsoever to any third party therefor.

R. S., B. C., c. 44, § 27.

**Power of attorney by company. 87.** A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters as its attorney, to execute deeds on its behalf in any place situate within or without the limits of this Province; and every deed signed by such attorney, on behalf of the company and under his seal, shall bind the company and have the same effect as if it were under the common seal of the company.

R. S., B. C., c. 44, § 104; Imp. § 78.

**Power for company to have official seal for use abroad. 88.** 1. A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place not situate in this Province an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used. 2. A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district, or place not situate in the Province of British Columbia to affix the same to any deed or other document to which the company is party in that territory, district, or place. 3. The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination



of the agent's authority has been given to the person dealing with him. 4. The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same. 5. A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company. Imp. § 79.

*Prospectus.*

**Filing of prospectus. 89.** [As amended by 1911, c. 8, § 11.] 1. Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus. 2. A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed with the Registrar of Companies on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration. 3. The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section. 4. Every prospectus shall state on the face of it that a copy has been filed as required by this section. 5. If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding twenty-five dollars for every day from the date of the issue of the prospectus until a copy thereof is so filed.

Imp. § 80.

**Specific requirements as to particulars of prospectus. 90.** 1. Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state: a) The contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders' or management or deferred shares (if any), and the nature and extent of the interest of the holders in the property and profits of the company; and b) The number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and c) The names, descriptions, and addresses of the directors or proposed directors; and d) The minimum subscription on which the directors may proceed to allotment, and the amount payable on the application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount (if any) paid on shares so allotted; and e) The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; and f) The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm the member of the firm shall not be treated as separate vendors; and g) The amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill; and h) The amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and i) The amount or estimated amount of preliminary expenses; and j) The amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and k) The dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof

may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus; and l) The names and addresses of the auditors (if any) of the company; and m) Full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and n) Where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

2. For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where: a) The purchase money is not fully paid at the date of issue of the prospectus; or b) The purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or c) The contract depends for its validity or fulfilment on the result of that issue.

3. Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

4. Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

5. Where such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them.

6. In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that: a) As regards any matter not disclosed, he was not cognisant thereof; or b) The non-compliance arose from an honest mistake of fact on his part: Provided that in the event of non-compliance with the requirements contained in paragraph (m) of subsection (1) of this section no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

7. This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for the debentures of the company, whether with or without the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

8. The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

9. Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Imp. § 81.

**Restriction on alteration of terms of contract mentioned in prospectus.** 91. A company shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus, except subject to the approval of the statutory meeting.

Imp. § 83.

**Liability for statements in prospectus.** 92. 1. Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised



the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved: a) With respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true: and b) With respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation: Provided that the director, person named as director, promoter, or person who authorised the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and c) With respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document; or unless it is proved; d) That having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or e) That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or f) That after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor. 2. Where an existing company has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorised the issue of the prospectus, or has adopted or ratified it. 3. Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof. 4. Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation. 5. For the purposes of this section: The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

#### *Allotment.*

**Restriction as to allotment. 93.** 1. No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely: a) The amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or b) If no amount is so fixed and named, then the whole amount of the share capital so offered for subscription has been subscribed, and the sum payable on application for the amount

so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company. 2. The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription. 3. The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share. 4. If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest; and if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part. 5. Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void. 6. This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription. 7. In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription, that is to say: a) The amount (if any) fixed by the memorandum or articles as the minimum subscription upon which the directors may proceed to allotment; or b) If no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash, has been subscribed, and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company. This subsection shall not apply to a private company or to a company which has allotted any shares or debentures before the passing of this Act.

Imp. § 85. Debentures creating a charge on property without specifically describing it are entitled to registration under the Land Registry Act. — *In re Land Registry Act*, (1904). 10 B. C. 370.

**Effect of irregular allotment. 94.** 1. An allotment made by a company to an applicant in contravention of the provisions of the last foregoing section shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up. 2. If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of the last foregoing section with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

Imp. § 86.

**Restrictions on commencement of business. 95.** [As amended by 1911, c. 8, § 11.] 1. A company shall not commence any business or exercise any borrowing powers unless: a) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and b) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and c) There has been filed with the Registrar of Companies a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with. 2. The Registrar of Companies shall, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled. 3. Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding. 4. Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures. 5. If any com-



pany commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding two hundred and fifty dollars for every day during which the contravention continues. 6. Nothing in this section shall apply to a private company or to a company registered before the passing of this Act, or to a company which does not issue a prospectus inviting the public to subscribe for its shares or to a company now or hereafter to be incorporated under section 131 of this Act.

Imp. § 87.

**Return as to allotments. 96.** 1. Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the Registrar of Companies: a) A return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and b) In the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up and the consideration for which they have been allotted. 2. Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment file with the Registrar of Companies the prescribed particulars of the contract. 3. If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding two hundred and fifty dollars for every day during which the default continues: Provided that, in case of default in filing with the Registrar of Companies within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the Court may think proper.

Imp. § 86.

#### *Commissions and discounts.*

**Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc. 97.** 1. It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the memorandum or articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised, and if the amount or rate per cent. of the commission paid or agreed to be paid, is in the case of shares offered to the public for subscription, disclosed in the prospectus. 2. Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise. 3. Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

Imp. § 89.

**Statement in balance sheet as to commissions and discounts. 98.** Where a company has paid any sums by way of commission in respect of any shares or debentures,

tures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has been not written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

Imp. § 90.

*Payment of interest out of capital.*

**Power of company to pay interest out of capital in certain cases. 99.** Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which can not be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant: Provided that: 1. No such payment shall be made unless the same is authorised by the articles or by special resolution; 2. No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Lieutenant-Governor in Council; 3. Before sanctioning any such payment the Lieutenant-Governor in Council may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry; 4. The payment shall be made only for such period as may be determined by the Lieutenant-Governor in Council, and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided; 5. The rate of interest shall in no case exceed five per cent. per annum or such lower rate as may for the time being be prescribed by Order in Council; 6. The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid; 7. The accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

Imp. § 91.

*Certificates of shares, etc.*

**Limitation of time for issue of certificates. 100.** 1. Every company shall within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the registration of the transfer of any such shares, debentures, or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide. 2. If default is made in complying with the requirements of this section, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding twenty-five dollars for every day during which the default continues.

Imp. § 92.

*Information as to mortgages, charges, etc.*

**Registration of mortgages and charges. 101.** [As amended by 1911, c. 8, §§ 13, 14.] 1. Every mortgage or charge created by a company after the coming into force of this Act, and being either: a) A mortgage or charge for the purpose of securing any issue of debentures; or b) A mortgage or charge on uncalled share capital of the company; or c) A mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or d) A mortgage or charge on any land, wherever situate, or any interest therein; or e) A mortgage or charge on any book debts of the company; or f) A floating charge on the undertaking or property of the company; shall, so far as any security on the company's property or undertaking is thereby conferred, be void against bonâ fide purchasers and mortgagees for valuable consideration, and the liquidator and any creditor of the company, unless the instrument or a true copy thereof, by which the mortgage or charge is created or evidenced, is delivered to and filed with the Registrar of Companies for registration within twenty-one days after the date of its creation, but without prejudice to any contract or



obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable: Provided that: g) The time for registration of a mortgage or charge created outside the Province of British Columbia, and comprising solely property situate outside the Province of British Columbia, shall be thirty days from the creation of such mortgage or charge; and h) Where the mortgage or charge is created in the Province of British Columbia, but comprises property outside the Province of British Columbia, the instrument creating or purporting to create the mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and i) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a mortgage or charge on those book debts; and j) The holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land. 2. The Registrar shall keep a register of all mortgages and charges requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of same, the amount secured by it, short particulars of the property mortgaged or charged, the names of the mortgagors and the names of the mortgagees or persons entitled to the charge. 3. Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it shall be sufficient if there are delivered to or received by the Registrar within twenty-one days after the execution of the deed containing the charge, or, if there is no such deed, after the execution of any debentures of the series, the following particulars: a) The total amount secured by the whole series; and b) The dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined; and c) A general description of the property charged; and d) The names of the trustees (if any) for the debenture-holders; together with the deed containing the charge, or a true copy thereof, or, if there is no such deed, one of the debentures of the series, and the Registrar shall, on payment of the prescribed fee, enter those particulars in the register: Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued. 4. Where any commission, allowance, or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued: Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount. 5. The Registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with. 6. The company shall cause a copy of every certificate of registration given under this section to be indorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered: Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be indorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created. 7. It shall be the duty of the company to send to the Registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested

therein. Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration. 8. The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding twenty-five cents for each inspection. 9. Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

1906, c. 10; Imp. § 93.

**Registration of enforcement of security. 102.** 1. If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the powers contained in the instrument, give notice of the fact to the Registrar of Companies, and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges. 2. If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding twenty-five dollars for every day during which the default continues.

Imp. § 94.

**Filing of accounts of receivers and managers. 103.** 1. Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half-year while he remains in possession, and also on ceasing to act as receiver or manager, file with the Registrar of Companies an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the Registrar notice to that effect, and the Registrar shall enter the notice in the register of mortgages and charges. 2. Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding two hundred and fifty dollars.

Imp. § 95.

**Rectification of register of mortgages. 104.** A Judge of the Supreme Court, on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or that the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

1906, c. 10; Imp. § 96.

**Entry of satisfaction. 105.** The Registrar of Companies may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required furnish the company with a copy thereof.

1906, c. 10; Imp. § 97.

[106. Is repealed.]

**Penalties. 107.** [As amended by Acts, 1911, c. 8, §§ 17, 18.] 1. If default be made in the registration of any mortgage or charge or of the issues of debentures of a series requiring registration under this Act, then every company, and every director, manager, or secretary of a company, and every person knowingly a party to the default shall, on conviction, be liable to a fine not exceeding two hundred and fifty dollars for every day during which the default continues. 2. If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the Registrar under the foregoing provisions of this Act without a copy of the certificate of registration being indorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding five hundred dollars.

1906, c. 10; Imp. § 99.



**Company's register of mortgages. 108.** 1. Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto. 2. If any director, manager, or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding two hundred and fifty dollars.

R. S., B. C., c. 44, § 88; Imp. § 100.

**Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages. 109.** 1. The copies of instruments creating any mortgage or charge requiring registration under this Act with the Registrar of Companies, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding twenty-five cents for each inspection, as the company may prescribe. 2. If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding twenty-five dollars, and a further fine not exceeding ten dollars for every day during which the refusal continues; and, in addition to the above penalty, any Judge of the Supreme Court sitting in Chambers may by order compel an immediate inspection of the copies or register.

R. S., B. C., c. 44, § 88; Imp. § 101.

**Right of debenture-holders to inspect the register of debenture-holders and to have copies of trust deed. 110.** 1. Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of ten cents for every one hundred words required to be copied. 2. A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of twenty-five cents or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of ten cents for every one hundred words required to be copied. 3. If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding twenty-five dollars, and to a further fine not exceeding ten dollars for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the refusal shall incur the like penalty.

Imp. § 102.

**Validates registration under c. 12 of 1905. 111.** Every instrument purporting to mortgage or charge the property, or any part of the property, of a company executed in good faith subsequent to the eighth day of April, 1905, and before the passing of this Act, is: a) If registered with the Registrar of Joint-Stock Companies prior to the passing of this Act; b) If not already registered, as in the last preceding subsection mentioned, it be registered in conformity with this Act within twenty-one days after the passing of this Act, hereby declared to have been duly registered pursuant to the *Companies Act, 1897*.

1906, c. 10, § 3.

**Interpretation of word "company." 112.** The word "company" in the last preceding eleven sections of this Act shall include "extra-provincial company" and any company carrying on business within this Province.

1906, c. 10, § 5.

#### *Debentures and floating charges.*

**Perpetual debentures. 113.** A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are

made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Imp. § 103.

**Power to reissue redeemed debentures in certain cases. 114.** 1. Where either before or after the passing of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed to always have had power, to keep the debentures alive for the purposes of reissue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to reissue the debentures either by reissuing the same debentures or by issuing other debentures in their place, and upon such a reissue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued. 2. Where with the object of keeping debentures alive for the purpose of reissue they have either before or after the passing of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a reissue for the purposes of this section. 3. Where a company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited. 4. The reissue of a debenture or the issue of another debenture in its place under the power of this section given to or deemed to have been possessed by a company, whether the reissue or issue was made before or after the passing of this Act, shall not be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures to be issued. 5. Nothing in this section shall prejudice: a) The operation of any judgment or order of a Court of competent jurisdiction pronounced or made before the passing of this Act as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or b) Any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

Imp. § 104.

**Specific performance of contract to subscribe for debentures. 115.** A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Imp. § 105.

**Payments of certain debts out of assets subject to floating charge in priority to claims under the charge. 116.** 1. Where, in the case of a company registered under this Act, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of Part VIII. of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures. 2. The periods of time mentioned in the said provisions of Part VIII. of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be. 3. Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Imp. § 107.

*Statement to be published by insurance and certain other companies.*

**Certain companies to publish statement in Schedule. 117.** 1. Every company being an insurance company or a deposit, provident, or benefit society, subject



to the Legislative jurisdiction of this Province, shall before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form marked "C" in the first Schedule to this Act, or as near thereto as circumstances will admit.

2. A copy of the statement shall be put up in a conspicuous place in the registered or head office of the company or society, and in every branch office where the company or society is carried on. 3. Every member and every creditor of the company or society shall be entitled to a copy of the statement on payment of a sum not exceeding ten cents. 4. If default is made in compliance with this section, the company or society shall be liable to a fine not exceeding twenty-five dollars for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty. 5. For the purposes of this section a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

Imp. § 108.

*Inspection and audit.*

**Investigation of affairs of company by Government inspectors. 118.** 1. The Lieutenant-Governor in Council may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as he directs: a) In the case of a company having a share capital, on the application of members holding not less than one-tenth of the shares issued; b) In the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members. 2. The application shall be supported by such evidence as the Lieutenant-Governor in Council may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation; and the Lieutenant-Governor in Council may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry. 3. It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power. 4. An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly. 5. If any officer or agent refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding twenty-five dollars in respect of each such refusal. 6. On the conclusion of the investigation the inspectors shall report their opinion to the Lieutenant-Governor in Council, and a copy of the report shall be forwarded by the Provincial Secretary to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them. The report shall be written or printed, as the Lieutenant-Governor in Council may direct.

R. S., B. C., c. 44, §§ 105 — 108; Imp. § 109.

**Power of company to appoint inspectors. 119.** 1. A company may by special resolution appoint inspectors to investigate its affairs. 2. Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Lieutenant-Governor in Council, except that, instead of reporting to the Lieutenant-Governor in Council, they shall report in such manner and to such persons as the company in general meeting may direct. 3. Officers and agents of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Lieutenant-Governor in Council.

R. S., B. C., c. 44, § 109; Imp. § 110.

**Report of inspectors to be evidence. 120.** A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

R. S., B. C., c. 44, § 110; Imp. § 111.

**Appointment and remuneration of auditors. 121.** 1. Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting. 2. If an appointment of auditors is not made at an annual general meeting, the Lieutenant-Governor in Council may, on the appli-

cation of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services. 3. A director or officer of the company shall not be capable of being appointed auditor of the company. 4. A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting: Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting. 5. The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint auditors. 6. The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act. 7. The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

1903—04, c. 12, § 3; Imp. § 112.

**Powers and duties of auditors.** 122. 1. Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors. 2. The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state: a) Whether or not they have obtained all the information and explanations they have required; and b) Whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company. 3. The balance sheet shall be signed on behalf of the board by two of the directors of the company, or if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder. Any shareholder shall be entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding ten cents for every hundred words. 4. If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding two hundred and fifty dollars.

1903—04, c. 12, § 5; Imp. § 113.

**Rights of preference shareholders, etc., as to receipt and inspection of reports, etc.**

123. 1. Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company. 2. This section shall not apply to a private company nor to a company registered before the passing of this Act.

Imp. § 114.



*Carrying on business with less than the legal minimum of members.*

**Prohibition of carrying on business with fewer than five, or in the case of a private company, two members.** 124. If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below five, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months, and is cognisant of the fact that it is carrying on business with fewer than two members, or five members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same, without joinder in action of any other member.

R. S., B. C., c. 44, § 91; Imp. § 115.

*Service and authentication of documents.*

**Service of documents on company.** 125. A document may be served on a company by leaving it at or sending it by post to the registered office of the company, or by serving the president, chairman, secretary, or any director of the company, or by leaving the same at the residence of either of them, or with any adult person of his family or in his employ; or, if the company has no registered office, and has no known president, chairman, secretary, or director, the Court may order such publication as it deems requisite to be made in the premises, and such publication shall be held to be due service upon the company.

1900, c. 5, § 7; R. S., B. C., c. 44, § 116; Imp. § 116.

**Authentication of documents.** 126. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal.

R. S., B. C., c. 44, § 118; Imp. § 116.

*Tables and forms.*

**Application and alteration of tables and forms.** 127. 1. The forms in the second Schedule to this Act, or forms as near thereto as circumstances admit, shall be used in all matters to which those forms refer. 2. The Lieutenant-Governor in Council may alter any of the tables and forms in the first Schedule to this Act, so that it does not increase the amount of fees payable to the Registrar in the said Schedule mentioned, and may alter or add to the forms in the said second Schedule. 3. Any such table or form, when altered, shall be published in the *Gazette* and thenceforth shall have the same force as if it were included in one of the Schedules to this Act, but no alteration made by the Lieutenant-Governor in Council in Table A in the said first Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of such table.

R. S., B. C., c. 44, § 121; Imp. § 118.

*Arbitrations.*

**Arbitration between companies and others.** 128. 1. A company may, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with the *Arbitration Act*, any existing or future difference between itself and any other company or person. 2. Companies parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body. 3. Subject to any express provisions on the subject all the provisions of the *Arbitration Act* shall apply to arbitrations between companies and persons in pursuance of this Act.

R. S., B. C., c. 44, §§ 119, 120; Imp. § 119.

*Power to compromise.*

**Power to compromise with creditors and members.** 129. 1. Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such

manner as the Court directs. 2. If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company. 3. In this section the expression "company" means any company liable to be wound up under this Act.

Imp. § 120.

*Meaning of "private company."*

**Meaning of "private company". 130.** 1. For the purposes of this Act the expression "private company" means a company which by its memorandum or articles: a) Restricts the right to transfer its shares; and b) Limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and c) Prohibits any invitation to the public to subscribe for any shares or debentures of the company. 2. A private company may, subject to anything contained in the memorandum or articles, by passing a special resolution and by filing with the Registrar of Companies such a statutory declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company. 3. Where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

Imp. § 121.

*Part V. Incorporation of Mining Companies without any Personal Liability.*

[131—138. Relate to mining companies.]

*Part VI. Licensing and Registration of Extra-Provincial Companies.*

*General.*

**Extra-provincial companies required to become licensed or registered. Extra-provincial companies heretofore registered. 139.** Every extra-provincial company having gain for its purpose and object within the scope of this Act is hereby required to be licensed or registered under this or some former Act, and no company, firm, broker, or other person shall, as the representative or agent of or acting in any other capacity for any such extra-provincial company, carry on any of the business of an extra-provincial company within this Province until such extra-provincial company shall have been licensed or registered as aforesaid. This section shall apply to an extra-provincial company notwithstanding that it was heretofore registered as a foreign company under the provisions of any Act.

1898, c. 13, § 5; R. S., B. C., c. 44, § 123. This section is not in conflict with the Dominion Companies Act. That Act gives to a company organized under its power to carry on business in the various Provinces, consistently with the laws thereof. A Province may require as a condition precedent to doing business within it the securing of a license. — *Waterous Engine Works Co. v. Okanagan Lumber Co.*, (1908), 14 B. C. 238. An unlicensed extra-provincial company carrying on business in British Columbia can not sue on a contract entered into within the Province. — *Northwestern Construction Co. v. Young*, (1907), 13 B. C. 297; overruling *De Laval Separator Co. v. Walworth* (No. 1), (1907), 13 B. C. 74.

**Registrar's power to dispense with filing of documents. 140.** The Registrar may for good cause shown dispense with the filing by an extra-provincial company, proceeding to obtain a licence or registration under the provisions of this Part, of one or more of the documents which compose its charter and regulations, and may allow to be substituted therefor a list of the documents so dispensed with, accompanied by a statement of the reasons for dispensing with the originals, and (if he so require) by such memorandum of the contents of such originals as he may deem sufficient.

1898, c. 13, § 6.

**Rights of such company to sue, hold lands, etc. 141.** Any extra-provincial company licensed or registered under this Part may sue and be sued in its corporate name, and, if authorised so to do by its charter and regulations, may acquire and hold lands in British Columbia by gift, purchase, or as mortgagees or otherwise, as fully



and freely as private individuals, and may sell, lease, mortgage, or otherwise alienate the same.

R. S., B. C., c. 44, § 138. Where the principal place of business and the head office of a company was in England, and the contract of service with a person provided that accounts should be settled in England, his administrator could not sue the company in British Columbia. — *Wilson v. Hudson Bay Co.*, (1884), 1 B. C. II. 102. Note that the Companies Act does not apply to the Hudson Bay Company. — § 11, *supra*.

**Rights and duties of registered companies.** 142. Every extra-provincial company registered as a company under this Act shall, subject to the provisions of its charter and regulations, and of this Act, have and may exercise all the rights, powers, and privileges by this Act granted to and conferred upon companies incorporated thereunder; and every such extra-provincial company and the directors, officers, and members thereof shall be subject to and shall, subject as aforesaid, observe, carry out, and perform every act, matter, obligation, and duty by this Act prescribed and imposed upon companies incorporated thereunder, or upon the directors, officers, and members thereof.

R. S., B. C., c. 44, § 139.

**Power to issue and transfer shares. Register.** 143. Every extra-provincial company registered under this Part shall, in and by the power of attorney hereinafter prescribed, empower its attorney to issue and transfer shares of the company. Every such extra-provincial company shall, at its head office or chief place of business in this Province, provide and keep, in form and manner provided by section 33 of this Act, a register of all shares issued at such head office or chief place of business, and of all transfers of shares in the company made within this Province and presented for record at such head office or chief place of business; and every lawful transfer of shares made by a member shall, upon entry and record on such register, be valid and binding to all intents and purposes; and every act, matter, or thing lawfully done by the attorney of the company pursuant to this section shall be as valid and binding in all respects as if done by the company or the directors, managers, or officers of the company, pursuant to the provisions of the charter and regulations of the company and of this Act in that behalf.

R. S., B. C., c. 44, § 140.

**Surrender of certificate of registration for licence.** 144. Every extra-provincial company duly incorporated under the laws of Great Britain or Ireland, or of the Dominion of Canada, or of the late Province of Canada, or of any of the Provinces of Canada, heretofore registered in this Province as a foreign company under the provisions of any Act, may surrender to the Registrar the certificate of registration of the company issued under such Act and obtain from him a licence under the provisions of this Part; and for the purpose of obtaining such licence the surrender of such certificate of registration and the filing of the power of attorney prescribed by clause (d) of section 154 of this Act shall be deemed to be a sufficient compliance with the requirements of this Part.

R. S., B. C., c. 44, § 141; 1898, c. 13, § 10.

**What extra-provincial companies subject to the Act.** 145. Every extra-provincial company registered in this Province before the passage of the *Companies Act*, 1897, as a foreign company under the provisions of any Act in that behalf (other than a company entitled to obtain, and which has obtained, or may obtain a licence under this Part), and the directors, officers, and members thereof shall be subject to and shall observe, carry out, and perform every act, matter, obligation, and duty by this Act prescribed and imposed upon companies incorporated thereunder, or upon the directors, officers, and members thereof.

1898, c. 13, § 12.

**Security for costs by extra-provincial company.** 146. In case of any suit or other proceeding being commenced by any extra-provincial company against any person or corporation residing or carrying on business in this Province, such extra-provincial company shall furnish security for costs, if demanded.

R. S., B. C., c. 44, § 144. An extra-provincial company must give security for costs, although it is suing along with a resident of British Columbia, and has assets within the Province. — *McClary v. Howland*, (1900), 7 B. C. 299; *Alaska Steamship Co. v. Macanlay*, (1900), 7 B. C. 338; affirmed (1901), 8 B. C. 84.

**Chinese company.** 147. Nothing contained in this Part of this Act shall authorise the registration of any Chinese or Japanese company or association.

1897, c. 2, § 145.

**Lieutenant-Governor's power to suspend or revoke licence. 148.** The Lieutenant-Governor in Council may, by an Order in Council, to be published in three consecutive issues of the *Gazette*, suspend or revoke and make null and void any licence granted or any registration effected, under this Part, to any company which refuses or fails to keep a duly appointed attorney within the Province, or to comply with any of the provisions of the Part, and notwithstanding such suspension or revocation, the rights of creditors of the company shall remain as at the time of such suspension or revocation.

R. S., B. C., c. 44, §§ 131, 137.

**What certificate of registration or licence to extra-provincial companies to contain. 149.** The licence issued in pursuance of section 144 of this Act, or the certificate issued in pursuance of section 162, to an extra-provincial company heretofore registered as a foreign company need not contain in detail the objects of the company, but may incorporate them by reference to the former certificate of registration of the company

1898, c. 13, § 11.

*Special provisions relating to insurance companies.*

**Extra-provincial insurance companies must obtain licence. Licence fee. 150.** [As amended by 1911, c. 8, § 20.] 1. The business of every extra-provincial insurance company, whether joint stock, mutual, or assessment, shall for the purposes of this Part, be deemed to be within the scope of this Act, and after the first day of July, 1905, no extra-provincial insurance company shall undertake or effect, or offer to undertake or effect, any contract of insurance without having taken out a licence, and in all other respects complying with the provisions of this Act. 2. The fee to be paid by such extra-provincial company for such licence shall be two hundred and fifty dollars.

1905, c. 11, § 2.

**Annual statements to be filed by extra-provincial insurance companies. 151.** Every extra-provincial insurance company shall, on or before the first day of March in each and every year, file with the Registrar of Joint-Stock Companies a sworn statement of the financial condition and affairs of the company, and also showing their gross income in this Province, and any extra-provincial insurance company refusing or neglecting to file the statement by this section required, or to make prompt and explicit answer to any inquiries put by the Registrar touching the company's contracts or finances, or failing to take out a licence as required by this Act, shall be liable to a penalty of two hundred and fifty dollars for each and every day during which it carries on business after failing to comply with the provisions of the section; and provided, further, that proof of compliance with this section shall at all times be upon the company.

1905, c. 11, § 4.

**Penalty for carrying on business without licence. 152.** If any promoter, organiser, officer-bearer, manager, director, officer, collector agent, broker, employee, or any other person whatsoever undertakes or effects, or offers or agrees to undertake or effect, any contract of insurance for any extra-provincial insurance company, whether joint stock, mutual, or assessment, unless such company has taken out a licence under this Act, he shall be liable to a penalty of fifty dollars, and in default of payment shall be imprisoned, with or without hard labour, for a term not exceeding three months and not less than one month, and on a second or any subsequent conviction he shall be imprisoned with hard labour for a term not exceeding twelve months and not less than three months.

1905, c. 11, § 5.

*Licensing of extra-provincial companies.*

**Companies entitled to licence. 153.** Any extra-provincial company duly incorporated under the laws of: a) Great Britain and Ireland; b) The Dominion of Canada; c) The former Province of Canada; d) Any of the Provinces of the Dominion of Canada; and e) Any insurance company duly authorised by its charter and regulations to carry out or effect any of the purposes or objects to which the legislative authority of the Legislature of British Columbia extends, may obtain a licence from the Registrar authorising it to carry on business within this Province on compliance with the provisions of this Act, and on payment to the Registrar in respect of the several matters mentioned in the table marked B in the first Schedule



hereto the several fees therein specified, and shall, subject to the provisions of the charter and regulations of the company, and to the terms of the licence, thereupon have the same powers and privileges in this Province as if incorporated under this Act.

R. S., B. C., c. 44, § 124.

**Proceedings to obtain such licence. 154.** Before the issue of a licence to any such extra-provincial company, the company shall file in the office of the Registrar: a) A true copy of the charter and regulations of the company, verified in manner satisfactory to the Registrar, and showing that the company by its charter has authority to carry on business in the Province of British Columbia; and if any instrument included in the aforesaid is not written in the English language, a notarially certified translation thereof; b) An affidavit or statutory declaration that the company is still in existence and legally authorised to transact business under its charter; c) In the case of an insurance company, a copy of the last balance-sheet and auditor's report thereon; d) A duly executed power of attorney, under its common seal, empowering some person therein named, and residing in the city or place where the head office of the company in this Province is situate, to act as its attorney and to sue and be sued, plead or be impleaded, in any Court, and generally on behalf of such company and within the Province to accept service of process and to receive all lawful notices, and to do all acts and to execute all deeds and other instruments relating to the matters within the scope of the power of attorney and of the company to give to its attorney; and such company may from time to time, by a new or other power of attorney executed and filed as aforesaid, appoint another attorney within the Province for the purposes aforesaid to replace the attorney formerly appointed. The power of attorney may be according to a form approved of and provided by the Registrar; e) Notice of the place where the head office without the Province is situate; f) Notice of the city, town, district, or county in British Columbia where the head office of the company is proposed to be situate; g) The amount of the capital of the company; h) The number of shares into which it is divided.

R. S., B. C., c. 44, § 127.

**Contents of licence. Publication. Evidence. 155.** The licence shall set forth: a) The corporate name of the company; b) The place where the head office of the company is situate; c) The place where the head office of the company in this Province is situate; d) The name, address, and occupation of the attorney of the company; e) The amount of the capital of the company; f) The number of shares into which it is divided. And such certificate, together with a statement by the Registrar of the objects for which the company has been established and licensed, shall be published at the expense of the company for four weeks: g) In the *Gazette*; [h) and i) are repealed.]; and such licence shall be conclusive evidence of compliance with all the requirements of this Act. Notice of the appointment of a new attorney, or of the company ceasing to carry on business in this Province shall likewise be published for the time and in manner aforesaid.

R. S., B. C., c. 44, § 128.

**Evidence of licence. 156.** The licence, or a copy thereof certified under the hand and seal of the Registrar, or a copy of the *Gazette* containing such licence, shall be sufficient evidence in any proceeding in any Court in this Province of the due licensing of the company aforesaid.

R. S., B. C., c. 44, § 129.

**Substitutional service. 157.** If the power of attorney hereinbefore prescribed becomes invalid or ineffectual from any reason, or if other service can not readily be effected, the Court or Judge may order substitutional service of any process or proceeding upon the company to be made by such publication as is deemed requisite to be made in the premises, for at least three weeks in at least one newspaper; and such publication shall be held to be due service upon the company of such process or proceeding.

R. S., B. C., c. 44, § 130.

#### *Special and limited licences.*

[158. Is repealed.]

#### *Registration of extra-provincial companies.*

**Power for extra-provincial company to register. 159.** Any other extra-provincial company, duly authorised by its charter and regulations to carry out or effect any of the purposes or objects to which the legislative authority of the Legislature

of British Columbia extends, may register the company as a company under this Act on compliance with the provisions of this Part and on payment to the Registrar in respect of the several matters mentioned in the table marked B in the first Schedule hereto the several fees therein specified, and such company shall, subject to the provisions of the charter and regulations of the company, and of this Act, thereupon have the same powers and privileges in this Province as if incorporated under the provisions of this Act.

R. S., B. C., c. 44, § 132.

**Proceedings by such company to obtain registration. 160.** Any extra-provincial company desiring to become registered as a company under this Act as aforesaid may petition therefore under the common seal of the company, and with such petition shall file in the office of the Registrar: a) A true copy of the charter and regulations of the company, verified in manner satisfactory to the Registrar, and showing that the company by its charter has authority to carry on business in the Province of British Columbia; and if any instrument included in the aforesaid is not written in the English language, a notarially certified translation thereof; b) An affidavit or statutory declaration that the said company is still in existence and legally authorised to transact business under its charter; c) In the case of an insurance company, a copy of the last balance-sheet and auditor's report thereon; d) A duly executed power of attorney, under its common seal, empowering some person therein named and residing in the city or place where the head office of the company in this Province is situate, to act as its attorney and to sue and be sued, plead or be impleaded, in any Court, and generally, on behalf of such company and within the Province, to accept service of process and to receive all lawful notices, to issue and transfer shares or stock, and to do all acts and to execute all deeds and other instruments relating to the matters within the scope of the power of attorney and of the company to give to its attorney, and such company may from time to time, by a new or other power of attorney, executed and deposited as aforesaid, appoint another attorney within the Province for the purposes aforesaid to replace the attorney formerly appointed. The power of attorney may be according to a form approved of and provided by the Registrar; e) Notice of the place where the head office of the company without the Province is situate; f) Notice of the city, town, district, or county in British Columbia where the head office of the company is proposed to be situate; g) The amount of the capital of the company; and h) The number of shares into which it is divided.

R. S., B. C., c. 44, § 133.

**Powers of attorney by extra-provincial companies seeking registration. 161.** 1. The Registrar may accept from any extra-provincial company, proceeding to obtain registration under the provisions of section 160 of this Act, a power of attorney which varies in substance from that called for by clause (d) of said section, in that it omits to empower the attorney named therein to issue and transfer shares or stock, upon its being shown to his satisfaction either that the company is not a public company, the shares or stock whereof are upon the market, or that although the company is a public company, and the shares or stock thereof are upon the market, yet that, either owing to the small quantity of the shares or stock of the company held in the Province, and to the fact that the company does not propose to place any of the shares or stock upon the market in the Province, or to the fact that the consent of the holders of shares or stock within the Province has been obtained, the preponderance of convenience is in favour of exempting the company from empowering their attorney in the manner specified: a) Such certificate of registration issued to the company under the provisions of section 162 shall state, after the name, address, and occupation of the attorney, that such attorney is not empowered to issue or transfer shares or stock; b) The company shall thereupon be relieved from compliance with section 143 of this Act. 2. Any company which has heretofore filed a power of attorney empowering its attorney to issue and transfer shares and stock may have such power of attorney amended on summary application to the Registrar, and on satisfying him as aforesaid, and shall thereafter be relieved in manner aforesaid. The Registrar may direct the amendment to be given publicity in such manner as he may deem necessary.

1898, c. 13, § 8.

**Contents of certificate. Publication. 162.** [As amended by 1911, c. 8, § 23.] The Registrar shall issue to any extra-provincial company registered under this Act a certificate of registration which shall set forth: a) The corporate name of the com-



pany; b) The place where the head office of the company is situate; c) The place where the head office of the company in this Province is situate; d) The name, address, and occupation of the attorney of the company; e) The amount of the capital of the company; f) The number of shares in which it is divided, and the amount of each share; g) The time of the existence of the company, if incorporated for a limited period; h) In the case of a limited company, that the company is limited; i) In the case of a mining company, to which the non-personal liability sections of this Act apply, that the liability of the members of the company is so specially limited; and such certificate, together with a statement by the Registrar of the objects for which the company has been established and registered, shall be published at the expense of the company for four weeks: j) In the *Gazette*; [k) and l) are repealed]; and such certificate shall be conclusive evidence of compliance with all the requirements of this Act. And notice of the appointment of a new attorney, or of the company ceasing to carry on business in this Province, shall likewise be published for the time and in manner aforesaid.

R. S., B. C., c. 44, § 134; 1898, c. 13, § 9; 1900, c. 5, § 10.

**Evidence of such registration. 163.** The certificate of registration, or any copy thereof certified under the hand and seal of the Registrar, or a copy of the *Gazette* containing such certificate of registration, shall be sufficient evidence in any proceeding in any Court in this Province of the due registration of the company as aforesaid.

R. S., B. C., c. 44, § 135.

**Substitutional service on such company. 164.** If the power of attorney hereinbefore prescribed becomes invalid or ineffectual from any reason, or if other service can not readily be effected, the Court or Judge may order substitutional service of any process or proceeding upon the company to be made by such publication as is deemed requisite to be made in the premises, for at least three weeks in at least one newspaper; and such publication shall be held to be due service upon the company of such process or proceeding.

R. S., B. C., c. 44, § 136.

**Provision requiring all transactions of an unregistered company to conform to the laws of this Province. 165.** No act, matter, disposition, or thing affecting the corporate rights and property of the company within this Province, made, done, or executed by any extra-provincial company entitled to registration only under this Part, although valid by the laws of the country or state under which such company is incorporated, or permissible under its original corporate powers, shall be of any force or effect, or enforceable by the company or any one on its behalf by action in any Court in this Province, unless such act, matter, disposition, or thing be valid and permissible by the laws of British Columbia.

R. S., B. C., c. 44, § 143.

#### *Disabilities and penalties.*

**Penalty for doing business without licence. Proviso. 166.** If any extra-provincial company shall, without being licensed or registered pursuant to this Part, carry on in the Province of British Columbia any part of its business, such extra-provincial company shall be liable to a penalty of fifty dollars for every day upon which it so carries on business, and so long as it remains unlicensed or unregistered under this Act it shall not be capable of maintaining any action, suit, or other proceeding in any Court in British Columbia in respect of any contract made in whole or in part within this Province in the course of or in connection with its business, contrary to the requirements of this Part: Provided, however, that upon the granting or restoration of the licence or the issuance or restoration of the certificate of registration or the removal of any suspension of either the licence or the certificate, any action, suit, or other proceeding may be maintained as if such licence or certificate had been granted or restored or such suspension removed before the institution of any such action, suit, or other proceedings.

**Cannot hold land. Proviso. 167.** No extra-provincial company shall be capable of acquiring or holding lands or any interest therein in British Columbia, or registering any title thereto under the *Land Registry Act*, unless duly licensed or registered under this Act: Provided, however, that the granting of a licence or certificate of registration shall operate as a removal of any disability under this section.

It was once held that the Registrar is not justified in refusing to register a non-registered foreign company as the owner of land. — *Ex parte New Vancouver, etc., Co.* (1901), 9 B. C. 571; reversing s. c. (1890), 2 B. C. 8.

**Penalty for agent of unlicensed or unregistered company carrying on business.** 168. If any company, firm, broker, or other person acting as the agent or representative of or in any other capacity for an extra-provincial company not licensed or registered under this Act shall carry on any of its business contrary to the requirements of this Part, such company, firm, broker, agent, or other person shall be liable to a penalty of twenty dollars for every day it, he, or they shall so carry on such business.

**Power to remit penalties.** 169. The Lieutenant-Governor in Council may, when or after a licence has been granted or a certificate issued, remit in whole or part any penalty incurred under this Act by the company receiving the licence or the certificate, or by any representative or agent thereof, and may also remit in whole or part the costs of any action or proceeding commenced for the recovery of any such penalty, and thereupon the whole or such part of the costs, as the case may be, shall not be recoverable.

**Penalties only recoverable by or with consent of Attorney-General.** 170. [As amended by 1911, c. 8, § 24.] The penalties imposed by this Part shall be recoverable only by action at the suit of or brought with the written consent of the Attorney-General of British Columbia, and any action or proceeding to recover any such penalty shall be commenced within six months after the liability for such penalty has been incurred, and not afterwards. Provided that in any action to recover any such penalty the onus of proving that a company is duly licensed or registered under this or some former Act shall be upon the defendant.

### *Part VII. Process Against Unregistered Extra-Provincial Companies.*

**Definition of "company" in this Part.** 171. In this Part the word "company" shall be construed to mean any unlicensed and unregistered extra-provincial company which has done, entered into, or made any act, matter, contract, or disposition giving to any person or company a right of action in any Court in this Province.

R. S., B. C., c. 44, § 146.

**Service of process on unregistered company.** 172. Any writ or summons, plaint, injunction, or other legal proceeding duly issued at the instance or suit of any person by any competent Court of the Province, or officer of such Court, may be served as against the company by delivering the same at Victoria to the Registrar of the Supreme Court.

R. S., B. C., c. 44, § 147.

**Publication of such process.** 173. It shall be the duty of such Registrar to cause to be inserted in the four regular issues of the *Gazette*, consecutively, following the delivery of such process to him, a notice of such process with a memorandum of the date of delivery, stating generally the nature of the relief sought and the time limited and the place mentioned for entering an appearance.

R. S., B. C., c. 44, § 148.

**When such service valid.** 174. After such advertisement shall have appeared in such four issues, the delivery of such process to the Registrar as aforesaid shall be deemed, as against the defendant company, to be good and valid service of such process.

R. S., B. C., c. 44, § 149.

**Procedure on entering up judgment against company.** 175. In entering up, applying for or obtaining a judgment by default, or for the purpose of taking any proceeding consequent or following on such service, it shall not be necessary, so far as such service is concerned, to file any affidavit, but the plaintiff shall, instead thereof, file a copy of each of the four issues of the *Gazette* in which the advertisement shall have appeared: Provided, always, that when service of process shall have been effected as hereinbefore mentioned, the plaintiff shall and he is hereby required to prove the amount of the debt or damages claimed by him in manner following, that is to say: If the action shall have been brought in the Supreme Court, then before a jury, or before a Judge, or before the Registrar, as a Judge of the said Court may direct, or if the action shall have been brought in the County Court, before the County Court Judge; and the making of such proof shall be a condition precedent to the plaintiff obtaining judgment.

R. S., B. C., c. 44, § 150.

**Averment in action against company.** 176. In any action, suit, or proceeding against the company, it shall not be necessary to aver in any pleading, or to ad-



duce any evidence, that the company was organised or incorporated under the laws of any foreign state or jurisdiction, or that the company had power under its organisation or incorporation to make the contract or incur the liability in respect of which the action, suit, or proceeding against the company shall be brought.

R. S., B. C., c. 44, § 151.

**Act not to affect remedies against companies. 177.** Nothing in this Part contained shall be deemed to limit, abridge, or take away any legal right, recourse, or remedy against a company not therein enacted or recognised, nor to absolve or lessen any obligation, rule, or duty imposed by law on a company.

R. S., B. C., c. 44, § 152.

## *Part VIII. Winding-Up.*

### *Preliminary.*

**Modes of winding-up. 178.** 1. The winding-up of a company may be either: a) By the Court; or b) Voluntary; or c) Subject to the supervision of the Court. 2. The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding-up of a company in any of those modes.

Imp. § 122. A company organized under a Provincial Act may be compulsorily wound up under the Dominion Winding-up Act. — In re British Columbia Iron Works Co., (1899), 6 B. C. 536; in re Okell, etc. Co., (1902), 9 B. C. 153. And see notes to Dominion Winding-up Act § 2, *supra*.

### *Contributories.*

**Liability as contributories of present and past members. 179.** 1. In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following, that is to say: a) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding-up; b) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member; c) A past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act; d) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member; e) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up; f) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract; g) A sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves. 2. In the winding-up of a limited company, any director or manager, whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were, at the commencement of the winding-up, a member of an unlimited company: Provided that: a) A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding-up; b) A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office; c) Subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up. 3. In the winding-up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition

to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Imp. § 123.

**Definition of contributory.** 180. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Imp. § 124.

**Nature of liability of contributory.** 181. The liability of a contributory shall create a debt, of the nature of a specialty, accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Imp. § 125.

**Contributories in case of death of member.** 182. 1. If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability, and shall be contributories accordingly. 2. Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added, but they may be added as and when the Court thinks fit. 3. If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the personal and real estates of the deceased contributory, or either of them, and of compelling payment thereof of the money due.

Imp. § 126.

#### *Winding-up by Court.*

**Application of Part.** 183. The following sections of this Part shall apply to the winding-up of all companies or associations incorporated by or under the authority of the Legislature of British Columbia, except those companies or associations wound up on the ground of the bankruptcy or insolvency of such company or association.

**Circumstances in which company may be wound up by Court.** 184. A company may be wound up by the Court: a) If the company has by special resolution resolved that the company be wound up by the Court; b) If default is made in filing the statutory report or in holding the statutory meeting; c) If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; d) If the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below five; e) If the Court is of opinion that it is just and equitable that the company should be wound up.

Imp. § 129. The petition must on its face show a case for an order for winding-up. — In re Companies Winding-up Acts, (1898), 6 B. C. 112. Circumstances held sufficient for an order. In re Florida Mining Co., (1902), 9 B. C. 108; In re United Canneries, (1903), 9 B. C. 528. See also In re Atlas Canning Co. (1897), 5 B. C. 661.

**Provisions as to applications for winding up.** 185. 1. An application to the Court for the winding-up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any contributory or contributories, or either of those parties, together or separately: Provided that: a) A contributory shall not be entitled to present a petition for winding up a company unless: 1. Either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below five; or 2. The shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him and registered in his name for at least six months during the eighteen months before the commencement of the winding-up, or have devolved on him through the death of a former holder; and b) A petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held. 2. Where a company is being wound up voluntarily or subject to supervision, a petition may be presented by the liquidator, as well as by any other person authorised in that behalf under the other provisions of this section, but the Court shall not make a winding-up order on the petition unless



it is satisfied that the voluntary winding-up or winding-up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

Imp. § 137.

**Effect of winding-up order. 186.** An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company.

Imp. § 138.

**Commencement of winding up by Court. 187.** A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Imp. § 139.

**Power to stay or restrain proceedings against company. 188.** At any time after the presentation of a petition for winding up, and before a winding-up order has been made, the company, or any contributory, may: a) Where any action or proceeding against the company is pending in the Supreme Court or Court of Appeal, apply to the Court in which the action or proceeding is pending for a stay of proceedings therein; and b) Where any other action or proceeding is pending against the company, apply to the Court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding; and the Court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Imp. § 140.

**Powers of Court on hearing petition. 189.** 1. On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets. 2. Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

Imp. § 141.

**Actions stayed on winding-up order. 190.** When a winding-up order has been made, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

Imp. § 142. A secured creditor has a right to apply for and obtain leave to bring an action to enforce his security. — *In re Lenora, etc., Co.*, (1902), 9 B. C. 471.

**Copy of order to be forwarded to Registrar. 191.** On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the Registrar of Companies, who shall make a minute thereof in his books relating to the company.

Imp. § 143.

**Power of Court to stay winding up. 192.** The Court may at any time after an order for winding up, and on proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time on such terms and conditions as the Court thinks fit.

Imp. § 144.

**Court may have regard to wishes of creditors or contributories. 193.** The Court may, as to all matters relating to a winding-up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Imp. § 145.

#### *Liquidators.*

**Appointment, remuneration and title of liquidators. 194.** 1. For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators. 2. The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up: a) If a provisional liquidator is appointed before the making of a winding-up order, any fit person may be appointed; b) Such provisional liquidator shall promptly give notice of his appointment to the Registrar of Companies and give security in such amount as the Court may direct to the satisfaction of the

Registrar of the Court; c) When any person other than the provisional liquidator is afterwards appointed liquidator he shall not be capable of acting as liquidator until he has notified his appointment to the Registrar of Companies and given security in the prescribed manner to the satisfaction of the Registrar of the Court. 3. If more than one liquidator is appointed by the Court, the Court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed. 4. A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court. 5. A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court. 6. The liquidator shall receive such salary or remuneration by way of percentage or otherwise as the Court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the Court directs. 7. A liquidator shall be described by the style of the liquidator of the particular company in respect of which he is appointed, and not by his individual name. 8. The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Imp. § 149.

**Custody of company's property. 195.** 1. In a winding-up by the Court the liquidator shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled. 2. In a winding-up by the Court, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the Court.

Imp. § 150.

**Powers of liquidator. 196.** 1. The liquidator in a winding-up by the Court shall have power, with the sanction either of the Court or of the committee of inspection (if any): a) To bring or defend any action or other legal proceeding in the name and on behalf of the company; b) To carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof; c) To employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself; but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction. 2. The liquidator in a winding-up by the Court shall have power: a) To sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels; b) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal; c) To prove, rank, and claim in the distribution of the estate of any contributory, for any balance against his estate, and to receive dividends in such distribution in respect of that balance, as a separate debt due from the estate of the contributory, and rateably with the other separate creditors; d) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business; e) To raise on the security of the assets of the company any money requisite; f) To take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which can not be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself; g) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets. 3. The exercise by the liquidator of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers. 4. Where a liquidator is provisionally appointed by the Court, the Court may limit and restrict his powers by the order appointing him.

Imp. § 151.

**Meetings of creditors and contributories in winding up. 197.** 1. When a winding-up order has been made by the Court, the liquidator shall summon separate meet-



ings of the creditors and contributories of the company for the purpose of: a) Determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed. 2. The Court may make an appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section, the Court shall decide the difference and make such order thereon as the Court may think fit.

Imp. § 152.

**Payments of liquidator in winding up into bank. 198.** 1. Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as the Court may direct, pay the money received by him into some chartered bank. 2. If any such liquidator at any time retains for more than ten days a sum not<sup>1)</sup> exceeding two hundred and fifty dollars, or such other amount as the Court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the lawful rate per annum, and shall be liable to disallowance of all or such part of his remuneration as the Court may think just, and to be removed from his office by the Court, and shall pay any expenses occasioned by reason of his default. 3. A liquidator of a company which is being wound up by the Court shall not pay any sums received by him as liquidator into his private banking account.

Imp. § 154.

**Audit of liquidator's accounts in winding up. 199.** 1. Every liquidator of a company which is being wound up by the Court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Registrar of the Court an account of his receipts and payments as liquidator. 2. The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form. 3. The Court shall cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator. 4. When the account has been audited, one copy thereof shall be filed with the Court, and such copy shall be open to the inspection of any creditor, or of any person interested. 5. The auditor shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

Imp. § 155.

**Books to be kept by liquidator in winding up. 200.** Every liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

Imp. § 156.

**Release of liquidators. 201.** 1. When the liquidator of a company which is being wound up by the Court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend (if any) to the creditors and adjusted the rights of the contributories among themselves, and make a final return (if any) to the contributories, or has resigned or has been removed from his office, the Court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of this Act, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly. 2. Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty. 3. An order of the Court releasing the liquidator shall discharge him from

<sup>1)</sup> *Sic*; an error?

all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact, or may be reversed on appeal to the Court of Appeal. 4. Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Imp. § 157.

**Exercise and control of liquidator's powers. 202.** 1. Subject to the provisions of this Act, the liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection. 2. The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be. 3. The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding up. 4. Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors. 5. If any person is aggrieved by any act or decision of the liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

Imp. § 158.

**Control of Court over liquidators. 203.** 1. The Court shall take cognisance of the conduct of liquidators of companies which are being wound up by the Court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by Statute, rules or otherwise with respect to the performance of his duties, or if any complaint is made to the Court by any creditor or contributory in regard thereto, the Court shall inquire into the matter, and take such action thereon as it may be deemed expedient. 2. The Court may at any time require any liquidator of a company which is being wound up by the Court to answer any inquiry in relation to any winding up in which he is engaged, and may, if thought fit, order his examination on oath before the Registrar or any special examiner appointed by the Court concerning the winding-up. 3. The Court may also direct a local investigation to be made of the books and vouchers of the liquidator.

Imp. § 159.

*Committee of inspection, special manager, receiver.*

**Committee of inspection in winding up. 204.** 1. A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court. 2. The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary. 3. The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present. 4. Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator. 5. If a member of the committee becomes insolvent, compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant. 6. Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors) or of contributories (if he represents contributories), of which seven days' notice has been given, stating the object of the meeting. 7. On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of



contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy. 8. The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee. 9. If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Court on the application of the liquidator.

Imp. § 160.

**Power to appoint special manager. 205.** 1. The liquidator of a company, whether provisionally or otherwise, may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court to, and the Court may on such application, appoint a special manager thereof to act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be intrusted to him by the Court. 2. The special manager shall give such security and account in such manner as the Court may direct: 3. And shall receive such remuneration as may be fixed by the Court.

Imp. § 161.

*Ordinary powers of Court.*

**Settlement of list of contributories and application of assets. 206.** 1. As soon as may be after making a winding-up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities. 2. In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others.

Imp. § 163.

**Power to require delivery of property. 207.** The Court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to the liquidator any money, property, or books and papers in his hands to which the company is *primâ facie* entitled.

Imp. § 164.

**Power to order payment of debts by contributory. 208.** 1. The Court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act. 2. The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him, or to the estate which he represents, from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance. 3. But in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Imp. § 165.

**Power of Court to make calls. 209.** 1. The Court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves. 2. In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Imp. § 166.

**Power to order payment into bank. 210.** 1. The Court may order any contributory, purchaser, or other person from whom money is due to the company to pay the same into some chartered bank to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator. 2. All moneys and securities paid or delivered into any bank or any branch thereof in the event of a winding-up by the Court shall be subject in all respects to the orders of the Court.

Imp. § 167.

**Order on contributory conclusive evidence. 211.** 1. An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due. 2. All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings, except proceedings against the real estate of a deceased contributory, in which case the order shall be only *primâ facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

Imp. § 168.

**Power to exclude creditors not proving in time. 212.** The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Imp. § 169.

**Adjustment of rights of contributories. 213.** The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Imp. § 170.

**Power to order costs. 214.** The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding-up in such order of priority as the Court thinks just.

Imp. § 171.

**Dissolution of company. 215.** 1. When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly. 2. The order shall be reported by the liquidator to the Registrar of Companies, who shall make in his books a minute of the dissolution of the company. 3. If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding twenty-five dollars for every day during which he is in default.

Imp. § 172.

**Delegation to liquidator of certain powers of Court. 216.** General rules may be made for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court; that is to say, the powers and duties of the Court in respect of: a) Holding and conducting meetings to ascertain the wishes of creditors and contributories; b) Settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets; c) Requiring delivery of property or documents to the liquidator; d) Making calls; e) Fixing a time within which debts and claims must be proved. Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

Imp. § 173.

#### *Extraordinary powers of Court.*

**Power to summon persons suspected of having property of company. 217.** 1. The Court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs, or property of the company. 2. The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them. 3. The Court may require



him to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to that lien. 4. If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

Imp. § 174.

**Power to order public examination of promoters, directors, etc. 218.** 1. When an order has been made for winding up a company by the Court, and the liquidator has made report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the Court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof. 2. The liquidator and any creditor or contributory may take part in the examination, either personally or by solicitor or counsel. 3. The Court may put such questions to the person examined as the Court thinks fit. 4. The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him. 5. A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the liquidator's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to examine him for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit. 6. Notes of the examination shall be taken down either in shorthand or in writing, and if in writing shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times. 7. The Court may, if it thinks fit, adjourn the examination from time to time. 8. An examination under this section may, if the Court so directs, and subject to general rules, be held before any officer of the Court being a Registrar, or before any District Registrar of the Court named for the purpose, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

Imp. § 175.

**Power to arrest absconding contributory. 219.** The Court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the Province of British Columbia, or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the Court may order.

Imp. § 176.

**Powers of Court cumulative. 220.** Any powers by this Act conferred on the Court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Imp. § 177.

*Enforcement of and appeal from orders.*

**Power to enforce orders. 221.** Orders made by the Court under this Act may be enforced in the same manner as orders made in any action pending therein.

Imp. § 178.

**Appeals from order. 222.** Subject to Rules of Court, an appeal from any order or decision made or given in the winding-up of a company by the Court under this

Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in cases within its ordinary jurisdiction.

Imp. § 181.

### *Voluntary winding-up.*

**Circumstances in which company may be wound up voluntarily. 223.** A company may be wound up voluntarily: 1. When the period (if any) fixed for the duration of the company by the Act, charter, or instrument of incorporation has expired; or when the event (if any) has occurred, upon the occurrence of which it is provided by the Act or charter or instrument of incorporation that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up; 2. If the company resolves by special resolution that the company be wound up voluntarily; 3. If the company, although it may be solvent as respects creditors, resolves by extraordinary resolution to the effect that it can not by reason of its liabilities continue its business, and that it is advisable to wind up.

Imp. § 182.

**Commencement of voluntary winding up. 224.** A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising the winding-up.

Imp. § 183.

**Effect of voluntary winding-up on status of company. 225.** When a company is wound up voluntarily, the company shall, from the commencement of the winding-up, cease to carry on its business, except so far as may be required for the beneficial winding-up thereof: Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Imp. § 184.

**Notice of resolution to wind up voluntarily. 226.** When a company has resolved by special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution by advertisement in the *Gazette*.

Imp. § 185.

**Consequences of voluntary winding-up. 227.** The following consequences shall ensue on the voluntary winding-up of the company: a) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company; b) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them; c) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof; d) The liquidator may, without the sanction of the Court, exercise all powers by this Act given to the liquidator in a winding-up by the Court; e) The liquidator may exercise the powers of the Court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves; f) The list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories; g) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two; h) If from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory, appoint a liquidator; i) The Court may, on cause shown, remove a liquidator, and appoint another liquidator.

Imp. § 186.

**Notice by liquidator of his appointment. 228.** 1. The liquidator in a voluntary winding-up shall, within twenty-one days after his appointment, file with the Registrar of Companies a notice of his appointment in the form prescribed. 2. If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding twenty-five dollars for every day during which the default continues.

Imp. § 187.



**Rights of creditors in a voluntary winding-up. 229.** 1. Every liquidator appointed by a company in a voluntary winding-up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the *Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate. 2. At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the Court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the Court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose of the meeting. 3. On any such application the Court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator, or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just. 4. No appeal shall lie from any order of the Court upon an application under this section. 5. The Court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

Imp. § 188.

**Power to fill vacancy in office of liquidator. 230.** 1. If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company in a voluntary winding-up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy. 2. For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators. 3. The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

Imp. § 189.

**Delegation of authority to appoint liquidators. 231.** 1. A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised. 2. Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

Imp. § 190.

**Arrangement when binding on creditors. 232.** 1. Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by any extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors. 2. Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

Imp. § 191.

**Power of liquidator to accept shares, etc., as consideration for sale of property of company. 233.** 1. Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called "the transferee company"), the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special reso-

lution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company. 2. Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company. 3. If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section. 4. If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution. 5. A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators; but, if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court. 6. For the purpose of an arbitration under this section the provisions of the *Companies' Clauses Act, 1897*, with respect to the settlement of disputes by arbitration shall be incorporated with this Act, and in the construction of those provisions this Act shall be deemed to be the special Act and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

Imp. § 192.

**Power to apply to Court. 234.** 1. Where a company is being wound up voluntarily, the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding-up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court. 2. The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the Court thinks fit, or may make such other order on the application as the Court thinks just.

Imp. § 193. A voluntary winding-up will not be converted into a compulsory one, unless it be shown that the rights of the petitioner will be prejudiced by voluntary winding-up. — *In re Oro Fino Mines*, (1900), 7 B. C. 388.

**Power of liquidator to call general meeting. 235.** 1. Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit. 2. In the event of the winding-up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding-up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.

Imp. § 194.

**Final meeting and dissolution. 236.** 1. In the case of every voluntary winding-up as soon as the affairs of the company are fully wound-up, the liquidator shall make up an account of the winding-up, showing how the winding-up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof. 2. The meeting shall be called by advertisement in the *Gazette*, specifying the time, place, and object thereof, and published continuously for one month at least before the meeting. 3. Within one week after



the meeting, the liquidator shall make a return to the Registrar of Companies of the holding of the meeting and of its date, and in default of so doing shall be liable to a fine not exceeding twenty-five dollars for every day during which the default continues. 4. The Registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved: Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit. 5. It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to file with the Registrar an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding twenty-five dollars for every day during which the default continues.

Imp. § 195.

**Costs of voluntary liquidation. 237.** All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Imp. § 196. A liquidator suing in his own name is personally liable for costs, even though he obtained leave from the Court to sue. — *Jackson v. Cannon*, (1902), 10 B. C. 73.

**Saving for rights of creditors and contributories. 238.** The voluntary winding-up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, if the Court is of opinion that the rights of the creditors or that the rights of the contributories will be prejudiced by a voluntary winding-up.

Imp. § 197.

**Power of Court to adopt proceedings of voluntary winding-up. 239.** Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding-up.

Imp. § 198.

*Winding-up subject to supervision of Court.*

**Power to order winding-up subject to supervision. 240.** When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

Imp. § 199.

**Effect of petition for winding-up subject to supervision. 241.** A petition for the continuance of a voluntary winding-up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over actions, be deemed to be a petition for winding up by the Court.

Imp. § 200.

**Court may have regard to wishes of creditors and contributories. 242.** The Court may, in deciding between a winding-up by the Court and a winding-up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Imp. § 201.

**Power for Court to appoint or remove liquidators. 243.** 1. Where an order is made for a winding-up subject to supervision, the Court may, by the same or any subsequent order, appoint any additional liquidator. 2. A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company. 3. The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Imp. § 202.

**Effect of supervision order. 244.** 1. Where an order is made for a winding-up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether volun-

tarily. 2. An order for a winding-up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, and the exercise of all other powers, be deemed to be an order for winding up by the Court.

Imp. § 203.

*Supplemental provisions.*

**Avoidance of transfers, etc., after commencement of winding-up. 245.** 1. In the case of voluntary winding-up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding-up, shall be void. 2. In the case of a winding-up by or subject to the supervision of the Court, every disposition of the property (including things in action) of the company, and every transfer of shares or alteration in the status of its members, made after the commencement of the winding-up, shall, unless the Court otherwise orders, be void.

Imp. § 205.

**Debts of all descriptions to be proved. 246.** In every winding-up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Imp. § 206.

**Preferential payments. 247.** 1. In a winding-up there shall be paid in priority to all other debts: a) All assessed taxes, rates, land tax, property or income tax assessed on the company up to the first day of January next before that date, and not exceeding in the whole one year's assessment; b) All wages or salary of any clerk or servant in respect of services rendered to the company during three months before the said date, not exceeding two hundred and fifty dollars; and c) All wages of any workman or labourer, whether payable for time or for piece work, in respect of services rendered to the company during three months before the said date; and d) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts (not exceeding in any individual case five hundred dollars) due in respect of compensation under the *Workmen's Compensation Act, 1902*. 2. The foregoing debts shall: a) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and b) In so far as the assets of the company available for payment of general creditors are insufficient to meet them have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge. 3. Subject to the retention of such sums as may be necessary for the costs and expenses of the winding-up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them. 4. In the event of the landlord or other person distraining or having distrained on any goods or effects of the company within one month next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof: Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made. 5. The date hereinbefore in this section referred to is: a) In the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and b) In any other case, the date of the commencement of the winding-up.

Imp. § 209.

**Fraudulent preference. 248.** Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed a fraudulent preference shall, if made or done by or against a company be deemed, in the event of its being wound up, a fraudulent preference of its creditors and be invalid accordingly.

Imp. § 210.



**Avoidance of certain attachments, executions, etc. 249.** Where any company is being wound up by or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents.

Imp. § 211.

**General scheme of liquidation may be sanctioned. 250.** 1. The liquidator may, with the sanction following, that is to say: a) In the case of a winding-up by the Court with the sanction either of the Court or of the committee of inspection; b) In the case of a voluntary winding-up with the sanction of an extraordinary resolution of the company, do the following things or any of them: c) Pay any classes of creditors in full; d) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable; e) Compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding-up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability, or claim, and give a complete discharge in respect thereof. 2. In the case of a winding-up by the Court, the exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

Imp. § 214.

**Power of Court to assess damages against delinquent directors, etc. 251.** 1. Where in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof, respectively, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the Court thinks just. 2. This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible. 3. Where an order for payment of money is made under this section, the order shall be deemed to be a final judgment.

Imp. § 215.

**Prosecution of delinquent directors, etc. 252.** 1. If it appears to the Court in the course of a winding-up by or subject to the supervision of the Court that any past or present director, manager, officer, or member of the company has been guilty of an offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding-up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company. 2. If it appears to the liquidator in the course of a voluntary winding-up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the Court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Imp. § 217.

**Meetings to ascertain wishes of creditors or contributories. 253.** 1. Where by this Act the Court is authorised, in relation to winding up, to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any

such meeting and to report the result thereof to the Court. 2. In the case of creditors, regard shall be had to the value of each creditor's debt. 3. In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles.

Imp. § 219.

**Books of company to be evidence. 254.** Where any company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Imp. § 220.

**Inspection of books. 255.** After an order for a winding-up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Imp. § 221.

**Disposal of books and papers of company. 256.** 1. When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say: a) In the case of winding-up by or subject to the supervision of the Court in such way as the Court directs; b) In the case of a voluntary winding-up, in such way as the company by extraordinary resolution directs. 2. After two years from the dissolution of the company no responsibility shall rest on the company or the liquidators or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any persons claiming to be interested therein.

Imp. § 222.

**Power of Court to declare dissolution of company void. 257.** 1. Where a company has been dissolved, the Court may at any time within one year of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved. 2. It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the Registrar of Companies an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding twenty-five dollars for every day during which the default continues.

Imp. § 223.

**Information as to pending liquidations. 258.** 1. If the winding-up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding-up is concluded, send to the Registrar of Companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. 2. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the liquidator. 3. If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding one hundred dollars for each day during which the default continues. 4. If it appears from any such statement or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same into the Provincial Treasury with a copy of the statement referred to in subsection 1, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof. 5. Any person claiming to be entitled to any money paid into the Provincial Treasury in pursuance of this section may apply to the Minister of Finance for payment of the same, and the Minister of Finance may, on a certificate by the liquidator that the person



claiming is entitled, make an order for the payment to that person of the sum due. 6. Any person dissatisfied with the decision of the Minister of Finance in respect of any claim made in pursuance of this section may appeal to the Court.

Imp. § 224.

**Judicial notice of signature of officers. 259.** In all proceedings under this Part of this Act, all Courts, Judges and persons judicially acting, and all officers, judicial or ministerial, of any Court or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of the Court appended to or impressed on any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

Imp. § 225.

**Special commission for receiving evidence. 260.** 1. The Judges of the County Courts shall be Commissioners for the purpose of taking evidence under this Act, and the Court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed Commissioner, who is hereby required to act as such Commissioner. 2. Every Commissioner shall, in addition to any other powers which he might lawfully exercise, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses and of allowing costs and expenses to witnesses as the Court which made the winding-up order. 3. The examination so taken shall be returned or reported to the Court which made the order in such manner as that Court directs.

Imp. § 226.

**Affidavits, etc. 261.** 1. Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn before any person lawfully authorised to take and receive affidavits pursuant to the Oaths Act. 2. All Courts, Judges, Justices, Commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such person attached, appended, or subscribed to any such affidavit or to any other document to be used for the purposes of this Part of this Act.

Imp. § 228.

**Returns by officers in winding up. 262.** The officers of the Court acting in the winding-up of companies shall make to the Registrar of Joint-Stock Companies, at Victoria, such returns of the business of their respective Courts and offices, at such times and in such manner and form as may be prescribed, and from those returns the Registrar shall cause books to be prepared which shall be open for public information and searches.

Imp. § 235.

**Proceedings of Registrar. 263.** 1. All documents purporting to be orders or certificates made or issued by the Registrar for the purposes of this Act, and to be sealed with his seal of office, shall be received in evidence and deemed to be such orders or certificates without further proof, unless the contrary is shown. 2. A certificate purporting to be signed by the Provincial Secretary that any order made, certificate issued or act done is the order, certificate or act of the Lieutenant-Governor in Council shall be conclusive evidence of the fact so certified.

Imp. § 236.

#### *Rules and fees.*

**Rules and fees for winding up. 264.** 1. The Lieutenant-Governor in Council may make general rules for carrying into effect the objects of this Part of this Act. 2. All general rules made under this section shall be laid before the Legislative Assembly within three weeks after they are made, if the Legislative Assembly is then sitting, and, if it is not sitting, within three weeks after the beginning of the next session of the Legislative Assembly, and shall be judicially noticed, and shall have effect as if enacted by this Act. 3. The Lieutenant-Governor in Council may, by any such rules or directions, repeal, alter or amend any rules made and directions given by the like authority under the *Companies Act, 1897*, or the *Companies Winding Up Act, 1898*, which are in force at the commencement of this Act, and such last-mentioned rules and directions and the fees payable thereunder shall continue in force and apply to any winding-up under this Act until repealed, altered, or amended. 4. There shall be paid in respect of proceedings under this Act in rela-

tion to the winding-up of companies such fees as the Lieutenant-Governor in Council may direct, and the Lieutenant-Governor in Council may further direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

Imp. § 237.

*Removal of defunct companies from register.*

**Registrar may strike defunct company off register. 265.** [As amended by 1911, c. 8, § 25.] 1. Where a company incorporated under any Public Act in this Province or a registered extra-provincial company has failed for any period of two years after such incorporation or registration to send or file any return notice or document required to be made or filed or sent to the Registrar pursuant to this Act or any former Public Act, or the Registrar has reasonable cause to believe that such company or an extra-provincial licensed company is not carrying on business or in operation, he shall send to such company by post a registered letter inquiring whether such company is carrying on business or in operation and notifying it of its default (if any); and 2. If within one month no reply to such letter is received by the Registrar, or such company fails to fulfil the lawful requirements of the Registrar or notifies the Registrar that it is not carrying on business or in operation, he may, at the expiration of another fourteen days, publish in the *Gazette* and send to such company a notice that at the expiration of two months from the date of that notice the name of such company mentioned therein will, unless cause is shown to the contrary, be struck off the register, and the company, if one incorporated as aforesaid, will be dissolved. 3. At the expiration of the time mentioned in such last-mentioned notice, the Registrar shall, unless cause to the contrary is previously shown by such company, strike the name of such company off the register and shall publish notice thereof in the *Gazette* for one month, and on such last-mentioned publication the company, being an incorporated company as aforesaid, shall be dissolved; or, being an extra-provincial company, shall be deemed to have ceased to do business in the Province, under its licence or certificate of registration: Provided that the liability (if any) of every director, managing officer, and member of any such company shall continue and may be enforced as if the name of said company had not been struck off the register. 4. If any such company or a member or creditor thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member or creditor may, before the completion of the last-mentioned publication, apply to the Court; and the Court, if satisfied that the company was at the time of the striking off carrying on business or in operation and that it is just to do so, may, upon such terms as the Court may see fit to impose, including the payment of any costs and expenses, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had never been struck off. 5. A letter or notice authorised or required for the purpose of this section to be sent to any such company may be sent by post addressed to the company at its registered or head office in this Province, or if no office has been registered addressed to the care of some director or officer of the company, or if there be no director or officer of the company whose name and address are known to the Registrar the letter or notice in identical form may, in the case of a company incorporated as aforesaid, be sent to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in the memorandum, and in the case of an extra-provincial company sent to the attorney of such company. 6. Where a company is being wound up, and the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up and the returns required to be made by the liquidator have not been made for a period of three consecutive months, after notice by the Registrar demanding the returns has been sent by post to the registered address of the company and to the liquidator at his last known place of business, the provisions of this section shall apply in like manner as if the Registrar had not within one month after sending the letter first mentioned received any answer thereto.

Imp. § 242.



### *Part IX. Registration Office and Fees.*

**Appointment of officers. Inspection of documents. Copies. 266.** 1. The Lieutenant-Governor in Council may appoint such registrars, assistant registrars, clerks, and servants as may be deemed necessary for the registration of companies under this Act, and the directing of such other duties as may be imposed upon them, and may make regulations with respect to their duties, and may remove any persons so appointed. 2. The Lieutenant-Governor in Council may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies. 3. Any person may inspect the documents kept by the Registrar on payment of such fees as may be appointed by the Lieutenant-Governor in Council, not exceeding twenty-five cents for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar, on payment for the certificate, certified copy or extract of the prescribed fees, not exceeding one dollar for a certificate of incorporation, and not exceeding ten cents for each folio of a certified copy or extract. 4. A copy of or extract from any document kept and registered at the office for the registration of companies, certified to be a true copy under the hand of the Registrar or an Assistant Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document. 5. Whenever any act is by this Act directed to be done to or by the Registrar of Companies, it shall, until the Lieutenant-Governor in Council otherwise directs, be done to or by the existing Registrar of Joint-Stock Companies, or in his absence to or by such person as the Lieutenant-Governor in Council may for the time being authorise.

Imp. § 243.

**Fees. 267.** 1. There shall be paid to the Registrar in respect of the several matters mentioned in Table B in the first Schedule to this Act the several fees therein specified, or such smaller fees as the Lieutenant-Governor in Council may from time to time direct. 2. All fees paid to the Registrar in pursuance of this Act shall be paid into the Provincial Treasury.

Imp. § 244.

### *Part X. Application of Act to Companies formed and Registered under former Companies Acts.*

**Application of Act to companies formed under former Companies Acts. 268.** In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company: Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the aforesaid Acts or Ordinances, as the case may be.

Imp. § 245.

**Application of Act to companies registered under former Companies Acts. 269.** Save as hereinbefore provided, this Act shall apply to every company registered under any former public Act or Ordinance, except the *Companies Act, 1878*, and the *Companies Act, 1890*, in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act: Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the aforesaid Acts or Ordinances, as the case may be.

Imp. § 246.

**Mode of transferring shares. 270.** Any existing company may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

Imp. § 248.

*Part XI. Companies Authorised to Register under this Act.*

**Companies capable of being registered. 271.** 1. With the exceptions and subject to the provisions mentioned and contained in this section: a) Any company consisting of three or more members, which was in existence on the eighth day of May, eighteen hundred and ninety-seven; and b) Any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of the Legislature of the Province of British Columbia other than this Act, including a specially incorporated company under the *Water Clauses Consolidation Act, 1897*, or of letters patent, or being otherwise duly constituted by law, and consisting of five or more members, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up. 2. Provided as follows: c) A company having the liability of its members limited by Act of the Legislature of the Province of British Columbia or letters patent, and not being a joint-stock company as hereinafter defined, shall not register in pursuance of this section; d) A company having the liability of its members limited by Act of the Legislature of the Province of British Columbia or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee; e) A company that is not a joint-stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares; f) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose; g) Where a company not having the liability of its members limited by Act of the Legislature of the Province of British Columbia or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting; h) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount. 3. In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company. 4. Save and except a specially incorporated company under the *Water Clauses Consolidation Act, 1897*, a company registered under any former Act or Ordinance bringing into force the *Imperial Companies Act, 1862* (25 & 26 Vict., c. 89), or registered under the *Companies Act, 1897*, shall not be registered in pursuance of this section.

Imp. § 249.

**Definition of joint-stock company. 272.** For the purposes of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Imp. § 250.

**Requirements for registration by joint-stock companies. 273.** Before the registration in pursuance of this Part of this Act of a joint-stock company there shall be delivered to the Registrar the following documents, that is to say: 1. A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number:



2. A copy of any Private Act of the Legislature of the Province of British Columbia, royal charter, letters patent, deed of settlement, contract of copartnership, memorandum and articles of association and by-laws, or any other instrument constituting or regulating the company; and 3. If the company is intended to be registered as a limited company, a statement specifying the following particulars, that is to say: a) The nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists; b) The number of shares taken and the amount paid on each share; c) The name of the company, with the addition of the word "limited" as the last word thereof; and d) In the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Imp. § 252.

**Requirements for registration by other than joint-stock companies. 274.** Before the registration in pursuance of this Part of this Act of any company not being a joint-stock company, there shall be delivered to the Registrar: 1. A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and 2. A copy of any Act of the Legislature of the Province of British Columbia, letters patent, deed of settlement, contract of copartnership, or other instrument constituting or regulating the company; and 3. In the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Imp. § 253.

**Authentication of statements of existing companies. 275.** The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

Imp. § 254.

**Registrar may require evidence as to nature of company. 276.** The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as hereinbefore defined.

**Exemption of certain companies from payment of fees. 277.** No fees shall be charged in respect of the registration in pursuance of this Part of this Act of a company if it has already paid the same fees as if it had originally been registered under this Act, otherwise the same fees shall be paid as are payable by a company registering under this Act.

Imp. § 257.

**Addition of "limited" to name. 278.** When a company registers in pursuance of this Part of this Act with limited liability, the word "limited" shall form and be registered as part of its name.

Imp. § 258.

**Certificate of registration of existing companies. 279.** On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees (if any) as are payable under Table B in the first Schedule to this Act, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands.

Imp. § 259.

**Vesting of property on registration. 280.** All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this Part of this Act shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Imp. § 260.

**Saving for existing liabilities. 281.** Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of the company before registration.

Imp. § 261.

**Continuation of existing actions. 282.** All actions and other legal proceedings which at the time of the registration of the company in pursuance of this Part

of this Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any judgment, decree or order obtained in any such action or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree or order, an order may be obtained for winding up the company.

Imp. § 262.

**Effect of registration under Act. 283.** When a company is registered in pursuance of this Part of this Act: 1. All provisions contained in any Act of the Legislature of the Province of British Columbia, deed of settlement, contract of copartnery, letters patent or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles; 2. All the provisions of this Act shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows, that is to say: a) The regulations in Table A in the first Schedule to this Act shall not apply unless adopted by special resolution; b) The provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered; c) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of the Legislature of this Province relating to the company; d) Subject to the provisions of this section, the company shall not have power, without the sanction of the Lieutenant-Governor in Council, to alter any provision contained in any letters patent relating to the company; e) The company shall not have power to alter any provision contained in a Royal charter or letters patent with respect to the objects of the company; f) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid; and, in the event of the death of any contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories shall apply; 3. The provisions of this Act with respect to: a) The registration of an unlimited company as limited; b) The powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up; c) The power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up, shall apply, notwithstanding any provisions contained in any Act of the Legislature of the Province of British Columbia, Royal charter, deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the company. 4. Nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of copartnery, letters patent, or other instrument constituting the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act. 5. Nothing in this Act shall derogate from any power of altering its constitution or regulations which may, by virtue of any Act of the Legislature of the Province of British Columbia, deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the company, be vested in the company.

Imp. § 263.



**Power to substitute memorandum and articles for deed of settlement. 284.** 1. Subject to the provisions of this section, a company registered in pursuance of this Part of this Act may, by special resolution, alter the form of its constitution by substituting a memorandum and articles for a deed of settlement. 2. The provisions of this Act with respect to confirmation by the Court and registration of the objects of a company shall, so far as applicable, apply to an alteration under this section, with the following modifications: a) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the Registrar of Companies a printed copy of the substituted memorandum and articles: and b) On the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company. 3. An alteration under this section may be made either with or without any alteration of the objects of the company under this Act. 4. In this section the expression "deed of settlement" includes any contract of copartnership or other instrument constituting or regulating the company, not being an Act of the Legislature of the Province of British Columbia, a Royal charter, or letters patent.

Imp. § 264.

**Power of Court to stay or restrain proceedings. 285.** The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Imp. § 265.

**Actions stayed on winding up order. 286.** Where an order has been made for winding up a company registered in pursuance of this Part of this Act, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

Imp. § 266.

## *Part XII. Miscellaneous and Supplemental.*

### *Legal proceedings, offences, etc.*

**Prosecution of offences. 287.** All violations of the provisions of this Act made punishable by any fine may be prosecuted under the *Summary Convictions Act*.

Imp. § 276.

**Court may apply fine to payment of costs; otherwise pay into Treasury. 288.** The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Provincial Treasury.

Imp. § 277.

**Insolvent plaintiff. Judge may order security for costs. 289.** Where a limited company is plaintiff in any action or other legal proceeding, any Judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Imp. § 278.

**Relief against breach of trust. 290.** If in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust it appears to the Court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think proper.

Imp. § 279.

**No one to use "limited" as part of name unless incorporated. 291.** If any person or persons trade or carry on business within the Province of British Columbia

under any name or title of which "limited" is the last word, that person or those persons shall unless duly incorporated with limited liability and entitled to use the word "limited" as the last word of their name, be liable to a fine not exceeding twenty five dollars for every day upon which that name or title has been used.

Imp. § 282.

**Applications to the Court. 292.** All applications to the Court authorised by this Act in which the procedure is not otherwise prescribed may, in all actions pending or other proceeding already in Court, be made to the Court by motion or to a Judge in Chambers by summons as may be most convenient, and in all other cases to a Judge in Chambers by petition.

**Power to adjourn. 293.** A Judge in Chambers may adjourn any matter before him into Court for further argument and consideration.

**Power to relieve from penalties. 294.** The Lieutenant-Governor in Council shall have power at any time to remit or relieve from, either absolutely or upon condition, any penalty imposed or to which a company may be liable for the infraction of this Act.

1898, c. 13, § 19.

*Authentication of documents issued by Lieutenant-Governor in Council.*

**Authentication of documents issued by Lieutenant-Governor in Council. 295.** Any approval, sanction, or licence, or revocation of licence, which under this Act may be given or made by the Lieutenant-Governor in Council may be under the hand of any person authorised in that behalf by the Lieutenant-Governor in Council.

Imp. § 284.

*Repeal of Acts and transitional provisions.*

**Repeal of Acts and savings. 296.** 1. The Acts following are hereby repealed: The "Revised Statutes of British Columbia, 1897," chapter 44, save and except section 160 thereof.

The "Companies Act Amendment Act, 1898" . . . . .	Chapter 13
The "Companies Winding-Up Act, 1898" . . . . .	Chapter 14
The "Companies Act, 1897, Amendment Act, 1899" . . . . .	Chapter 15
The "Companies Act, 1897, Amendment Act, 1900" . . . . .	Chapter 5
The "Companies Act, 1897, Amendment Act, 1901" . . . . .	Chapter 10
The "Companies Act, 1897, Amendment Act, 1902" . . . . .	Chapter 10
The "Companies Act, 1897, Amendment Act, 1902" . . . . .	Chapter 11
The "Companies Act, 1897, Amendment Act, 1904" . . . . .	Chapter 12
The "Companies Act, 1897, Amendment Act, 1905" . . . . .	Chapter 11
The "Companies Act, 1897, Amendment Act, 1906" . . . . .	Chapter 10
The "Companies Act Amendment Act, 1904, Amendment Act, 1907" . . . . .	Chapter 8
The "Companies Act, 1897, Amendment Act, 1908" . . . . .	Chapter 11
The "Companies Act, 1897, Amendment Act, 1909" . . . . .	Chapter 8

a) Provided that such repeal shall not affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or b) Any investigation, legal proceeding, or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture, or punishment; and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed as if this Act had not been passed: Provided, further, that such repeal shall not affect: c) Table A in the first Schedule annexed to the *Companies Act, 1862*, pursuant to the *Companies Ordinance, 1866*, or any part thereof, or the *Companies Act, 1897*, or any part thereof (either as originally contained in that Schedule or as altered in pursuance of section 71 of the *Companies Act, 1862*, or section 121 of the *Companies Act, 1897*), so far as the same applies to any company existing at the commencement of this Act. 2. The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of the *Interpretation Act* with regard to the effect of repeals.

Imp. § 286.

**Reference to documents. 297.** Where any enactment repealed by this Act is mentioned or referred to in any document, that document shall be read as if the corresponding provision (if any) of this Act were therein mentioned or referred to and substituted for the repealed enactment.

Imp. § 291.

**Saving of pending proceedings for winding up. 298.** The provisions of this Act with respect to winding up shall not apply to any company of which the winding-



up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and, for the purposes of the winding-up, the Act or Acts under which the winding-up commenced shall be deemed to remain in full force.

Imp. § 287.

**Saving of deeds. 299.** Every conveyance, mortgage, or other deed, made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not passed, and for the purposes of that deed the repealed enactment shall be deemed to remain in full force.

Imp. § 288.

**Relief where shares have been issued as fully paid up and no contract filed. 300.** 1. Whenever, before or after the commencement of this Act, any shares in the capital of any company incorporated under the *Companies Act, 1897*, credited as fully or partly paid up, shall have been issued for a consideration other than cash, and at or before the issue of such shares no contract, or no sufficient contract, was filed with the Registrar in compliance with section 50 of the *Companies Act, 1897*, the company or any person interested in such shares or any of them may apply to the Court for relief, and the Court, if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief, may make an order for the filing with the Registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period it shall, in relation to such shares, operate as if it had been duly filed with the Registrar aforesaid before the issue of such shares. 2. Any such application may be made in the manner prescribed by this Act, and either before or after an order has been made or an effective resolution has been passed for the winding-up of such company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid; and any such application shall, if not made by the company, be served on the company. 3. Any such order may be made on such terms and conditions as the Court may think fit, and the Court may make such order as to costs as it deems proper, and may direct that an office copy of the order shall be filed with the Registrar aforesaid, and the order shall in all respects have full effect. 4. Where the Court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience, or is impracticable it may, in lieu thereof, direct the filing of a memorandum in writing, in a form approved by the Court, specifying the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period it shall, in relation to such shares, operate as if it were a sufficient contract in writing within the meaning of section 50 of the *Companies Act, 1897*, and had been duly filed with the Registrar aforesaid before the issue of such shares. 5. The jurisdiction by this section given to the Court is not by implication to curtail or derogate from its jurisdiction to grant relief in any such case under the *Companies Act, 1897*, or otherwise.

1903—04, c. 12, § 1.

**Reference to 1905, c. 12. 301.** Whenever, in any Act before the passing of this Act, the Act 1905, c. 12, is referred to or cited, then the words "An Act to provide for the Registration of Companies' Mortgages" or *Companies' Mortgages Registration Act, 1905*, shall be struck out and in lieu thereof shall be inserted *The Companies Act, 1897*.

1906, c. 10, § 6; 1907, c. 8, § 7.

#### *Offices.*

**Former registration offices, registers, official receivers, etc., continued. Existing offices to be continued. Power of Lieutenant-Governor in Council. 302.** 1. The office existing at the commencement of this Act for registration of joint-stock companies shall be continued as if it had been established under this Act. 2. Registers of companies kept in any existing office shall be deemed part of the registers of companies to be kept under this Act. 3. The existing Registrars, Assistant Registrars, officers, clerks and servants in those offices shall during the pleasure of the Lieutenant-Governor in Council hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the Lieutenant-Governor in Council with regard to the execution of their duties.

Imp. § 289.

*Rules and regulations.*

**Power to make rules. 303.** The Lieutenant-Governor in Council may from time to time makes rules and regulations for carrying out the purpose of this Act, including matters in respect whereof no express or only partial or imperfect provision has been made.

**Power to make rules. 304.** Subject to this Act and to any rules made by the Lieutenant-Governor in Council, the Registrar of Companies may make rules and regulations for the management of his office and the conduct of business therein.

**Saving for existing rules of procedure, etc. 305.** Until revoked, and except as varied under the powers of this Act, the general rules and orders and scales of fees, under the *Companies Act, 1897*, or the *Companies Winding-Up Act, 1898*, in force at the commencement of this Act, and the Rules of Court in force at the commencement of this Act respectively with respect to the procedure for reduction of capital, and to winding up companies, and the practice and procedure for winding up companies respectively in force at the commencement of this Act, shall, so far as they are not inconsistent with this Act, continue in force.

Imp. § 290.

**Acts of companies not invalidated by default of directors. 306.** No act, matter, contract, agreement, undertaking, or proceeding of an extra-provincial company carrying on business in the Province prior to the passage of the *Companies Act, 1897*, shall be attacked, nor shall the same be invalidated, nullified, or held so to be by reason only of the fact that the company, or the directors, officers, or members thereof, or any of them, have since the passage thereof or may hereafter become liable to a penalty for neglect to observe any provision of the said Act.

1898, c. 13, § 18.

**Sections 74, 121, 122 and 300 applicable to all companies. 307.** Sections 74, 121, 122, and 300 of this Act shall apply to all companies heretofore or hereafter incorporated by any public Act of the Legislature of this Province.

1903—04, c. 12, § 9; 1907, c. 8, § 3.

**Commencement. 308.** This Act shall come into force on the first day of July, 1910.

*Schedules.**First Schedule.***Table A.***Regulations for Management of a Company limited by Shares.*

[These regulations are identical in all material respects with the regulations contained in the Imperial Companies (Consolidation) Act, 1908, (8 Edw. 7, c. 69), sched. I., table A.]

**Table B.**

[Contains table of fees payable by company.]

*Second Schedule.*

[Forms A.—E. are identical in all material respects with the forms A.—E. contained in the Imperial Companies (Consolidation) Act, 1908, (8 Edw. 7, c. 69, sched. III.)]

## **b) 1910, c. 21. An Act for preserving Purchasers of Stock from Losses by Forged Transfers (10th March, 1910).**

**Short title. 1.** This Act may be known and cited as the *Forged Transfers Act*.

**Interpretation. 2.** The expression "company" shall mean any company incorporated by or in pursuance of any Act of the Legislature of the Province of British Columbia, and shall include any industrial provident, friendly, benefit, building or loan society incorporated by or in pursuance of any Act of the Legislature of the Province of British Columbia. The expression "local authority" shall mean the Council of any municipality and any authority having power to levy or require the levy of a rate the proceeds of which are applicable to local purposes.

**Power to make compensation for losses from forged transfers, etc. 3. 1.** Where a company or local authority issue or have issued shares, stocks, or securities transferable by an instrument in writing or by an entry in any books or register



kept by or on behalf of the company, they shall have power to make compensation by a cash payment out of their funds for any loss arising from a transfer of any such shares, stock, or securities, in pursuance of a forged transfer, or of a transfer under a forged power of attorney, whether such loss arises and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person receiving such compensation, or any person through whom he claims has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid. 2. Any company or local authority may, if they think fit, provide either by fees not exceeding the rate of one dollar on every five hundred dollars transferred, with a minimum charge equal to that for one hundred dollars, to be paid by the transferee upon the entry of the transfer in the books of the company, or by insurance, reservation of capital, accumulation of income, or in any other manner which they may resolve upon, a fund to meet claims for such compensation. 3. For the purpose of providing such compensation any company may borrow on the security of their property. 4. Any such company or local authority may impose such reasonable restrictions on the transfer of their shares, stock, or securities, or with respect to powers of attorney for the transfer thereof, as they may consider requisite for guarding against losses arising from forgery. 5. Where a company or local authority compensate a person under this Part for any loss arising from forgery, the company shall, without prejudice to any other rights or remedies, have the same rights and remedies against the person liable for the loss as the person compensated would have had. 6. Where the shares, stock, or securities of a company or local authority have by amalgamation or otherwise become the shares, stock, or securities of another company, the last-mentioned company shall have the same power under this Part as the original company would have had if it had continued.

54 & 55 Vict. c. 43, § 2; 55 & 56 Vict. c. 36, §§ 2, 3, and 4; 1897, c. 2, § 155.

### c) 1911, c. 8. An Act to amend the Companies Act (1st March, 1911).

**Short title.** 1. This Act may be known and cited as the *Companies Act Amendment Act, 1911*.

[2—26. Amend the principal Act, and are there incorporated.]

## Sale of Goods.

### a) R. S. 1897, c. 169. An Act for codifying the Law relating to the Sale of Goods.

[1—24, 32—69. These sections embody substantially the provisions of the Imperial *Sale of Goods Act, 1893*, (56 & 57 Vic. c. 71). The doctrine of market overt applies.]

### b) An Act to amend the Sale of Goods Act (10th February, 1904).

**Short title.** 1. This Act may be cited as the *Sale of Goods Act Amendment Act, 1904*.

[2. Amends R. S. 1897, c. 69, § 25.]

### c) 1908, c. 7. An Act relating to Sales in Bulk (11th February, 1908).

[The buyer of a stock in trade of goods in bulk must before making payment therefor obtain from the seller an affidavit showing the names and addresses of the creditors of the seller in respect of the goods, with the amounts due them, or a written waiver signed by the creditors. The seller is bound to furnish such affidavit. Sales made otherwise are void as against the creditors.]

## Factors.

### R. S. 1897, c. 4. An Act to amend and consolidate the Factors Acts.

[1—15. This Act is identical in all material respects with the Imperial *Factors Act*, 1889, (52 & 53 Vic. c. 45.)]

### Assignments for the Benefit of Creditors.

#### a) 1901, c. 15. An Act respecting Assignments for the Benefit of Creditors (May 11th, 1901).

**Short title.** 1. This Act may be cited as the *Creditors' Trust Deeds Act, 1901*.

**Interpretation.** 2. In this Act, unless the context otherwise requires: The expression "assignment under this Act," means any assignment of property made by a debtor for the benefit of his creditors generally, and not made under the authority of any Act of the Parliament of Canada respecting bankruptcy or insolvency. There is no Dominion Act at present in force.

**Assignment for the benefit of creditors to be deemed valid if its construction and effect accord with its purpose.** 3. Every instrument executed after the 26th day of April, 1890, whereby any property shall be expressed to be conveyed, assigned, or otherwise transferred by any person to an assignee for the purpose of paying and satisfying, rateably or proportionately, and without preference or priority, all the creditors of such person their just debts, shall be deemed to be and be a good, valid and subsisting conveyance, if its construction and effect shall accord with its expressed purpose, and shall not be set aside or defeated on any account whatsoever, except actual fraud, notwithstanding any statute or law to the contrary.

Apart from any statutory provision the assignee is in the same position in reference to the impeachment of conveyances made by the assignor as the assignor himself. — *McKenzie v. Bell, Irving, Patterson & Co.* (1892), 2 B. C. 241.

**Description of property.** 4. Every assignment under this Act shall be valid and sufficient if it describes the property intended to be affected thereby in the words following, that is to say: "All my personal property, real estate, credits, and effects, which may be seized and sold under execution," or if it is in words to the like effect; and an assignment so expressed shall vest in the assignee all the real and personal estate, rights, property, credits, and effects, whether vested or contingent, belonging at the time of the assignment to the debtor, except such as are by law exempt from seizure or sale under execution or certificate of judgment, subject, however, as regards lands, to the provisions of the *Land Registry Act*, and the *Torrens Registry Act, 1899*.

Where an assignment is made of all personal property, credits, and effects that may be seized and sold under execution, the assignor can not claim exemption of chattels not coming within this description. — *In re Ley*, (1900), 7 B. C. 94. An unregistered deed confers on the grantee a title good as against a registered assignment for the benefit of creditors of the grantor, provided the grantee, or anyone claiming under him, subsequently registers the deed. — *Westfall v. Stewart*, (1907), 13 B. C. 111.

**Dating assignment.** 5. No assignment under this Act shall be dated after the execution thereof by the assignor.

**Amendment of assignment by Judge.** 6. No advantage shall be taken or gained by any creditor of or by any mistake, defect, or imperfection in any assignment under this Act, if the same can be amended or corrected, and if there be any mistake, defect, or imperfection therein, the same shall be amended by any Judge of the Supreme Court of British Columbia on application by any creditor of the assignor or on application by the assignee, on such notice being given to other parties concerned as the Judge shall think reasonable, and such amendment, when made, shall have relation back to the date of said assignment, but no such amendment shall be made so as to prejudice the rights of any innocent purchaser.

**Notice of assignment.** 7. No assignment under this Act shall be within the operation of the *Bills of Sale Act*, but notice of the assignment shall be published by the assignee in one issue of the *British Columbia Gazette* and in one issue of one newspaper having a general circulation in the county in which such assignment is re-



gistered. Such notice shall be published in the regular issue of said *British Columbia Gazette* and said newspaper issued first after ten days from the date of the assignment. Such notice shall contain the date of the assignment, the name, residence, and occupation of the debtor and assignee.

**Assignment to be registered.** 8. A counterpart of every such assignment shall also, within twenty-one days from the date thereof, be registered, together with an affidavit of a witness thereto of the due execution of such assignment, in the office of any County Court Registrar in which a bill of sale of the personal property or any part thereof so assigned should be registered; and such Registrar shall file all such instruments presented to him for that purpose, and shall endorse thereon the time of receiving the same in his office, and the same shall be kept there for inspection by all persons interested therein. The said Registrar shall number and enter such assignments, and shall collect the same fees as if such assignments had been registered under the *Bills of Sale Act*.

**Penalty against assignor for neglecting publication or registration.** 9. If the said notice is not published in the regular number of the *British Columbia Gazette* and in such newspaper as aforesaid, which shall respectively be issued first after twenty-one days from the date of the assignment, or of the assignment is not registered, as aforesaid, within twenty-one days from the execution thereof, the assignor shall be liable to a penalty of ten dollars for each and every day which shall pass after the issue of the number of the *Gazette* or newspaper in which the notice should have appeared until the same shall have been published, and a like penalty for each and every day which shall pass after the expiration of twenty-one days from the date of the assignment until the same shall have been registered.

**Penalty against assignee for neglecting publication or registration.** 10. [As amended by 1902, c. 18, § 2.] The assignee shall be subject to the like penalty as in section 9 hereinbefore provided for each and every day which shall pass after the expiration of twenty-one days from the delivery of the assignment to him, or of twenty-one days after his assent thereto until the assignment is published and registered as aforesaid.

**Recovery of above-mentioned penalties.** 11. Such penalties may be recovered summarily before a Judge of the Supreme Court or of the County Court of the County in which the assignment ought to be published or registered. One-half of the penalty shall go to the party suing, and the other half for the benefit of the estate of the assignor.

**Compelling publication and registration.** 12. In case the assignment be not registered and notice thereof published, an application may be made, by any one interested in the assignment, to a Judge of the Supreme or County Court to compel the publication and registration thereof, and the Judge shall make his order in that behalf, with or without costs, or upon the payment of costs by such person as he may, in his discretion, direct to pay the same.

**Assignment not invalidated by omission to publish.** 13. The omission to publish or register as aforesaid, or any irregularity in the publication or registration, shall not invalidate the assignment.

**Effect upon land of registration of assignment. Precedence of assignment.** 14. [As amended by 1902, c. 18, § 3.] 1. Every such assignment, when registered in any Land Registry Office, or under the provisions of the *Torrens Registry Act, 1899*, shall take precedence of all certificates of judgments and executions and attachments against land not completely executed by payment, subject to a lien for the costs of such judgment creditors: Provided, however, that this section shall not interfere with any priorities given by section 9 of Chapter 11 of the *Revised Statutes, 1897*, but such priorities shall apply only to judgments registered prior to the coming into force of this Act. 2. Every such assignment shall take precedence of all judgments, of all executions against goods, and of all attachments of debts not completely executed by payment, subject to a lien in favour of such execution creditors for their costs.

**Assignee to call meeting of creditors.** 15. It shall be the duty of the assignee immediately to inform himself, by reference to the debtor and his records of accounts, of the names and residences of the debtor's creditors, and within five days from the date of assignment to convene a meeting of the creditors for the giving of directions with reference to the disposal of the estate, by mailing, prepaid and registered, to every creditor known to him, a circular calling a meeting of creditors to be held at

some convenient place to be named in the notices, not later than fourteen days after the mailing of such notice, and by advertisement in the *British Columbia Gazette*, and all other meetings shall be called and held in like manner, except that no advertisement shall be required.

**Voting at creditors' meetings. 16.** At any meeting of creditors a creditor may vote in person or by proxy, authorised in writing, but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit or declaration in proof of his claim, stating the amount and nature thereof.

**Proof of claim. 17.** 1. Every person claiming to be entitled to rank on the estate assigned shall furnish to the assignee particulars of his claim, proved by affidavit or declaration, and such vouchers as the nature of the case admits of. A creditor proving his claim shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash. 2. With regard to claims not bearing interest, creditors shall be entitled to add to such claims interest from the time the same were payable to the date of the assignment, at the legal rate.

**Creditor may prove claim not due. 18.** A person whose claim has not accrued due shall, nevertheless, be entitled to prove under the assignment and vote at the meeting of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time which has to run until the claim becomes due.

**Set-off against claims. 19.** The law of set-off shall apply to all claims made against the estate, and also to all suits instituted by the assignee for the recovery of debts due to the assignor, in the same manner and to the same extent as if the assignor were plaintiff or defendant, as the case may be, except in so far as any claim or set-off shall be affected by the provisions of any Act respecting frauds or fraudulent preferences: Provided, however, that there shall be no set-off allowed of any claim against the estate acquired after the date of the assignment as against a claim made by the estate against the person so acquiring any such claim against the estate.

The Act relating to fraudulent preferences is printed *infra*.

**Personal and partnership debts. 20.** If any assignor executing an assignment under this Act for the general benefit of his creditors, owes debts both individually and as a member of a co-partnership or co-partnerships, the claim shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the others after all the creditors of those others have been paid in full.

An assignment by a partnership for the benefit of partnership creditors may be construed as an assignment of partnership assets only, and be valid as such under this Act. — *Eastman v. Pemberton*, (1900), 7 B. C. 459. As to assignments for the benefit of creditors by surviving partners, see *Hudson Bay Co. v. Green*, (1881), 1 B. C. I. 247.

**Calculation of votes. 21.** Except with regard to the provisions of section 23 of this Act, all subjects discussed at meetings of creditors shall be decided by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows: There shall be allowed: a) For every claim of or over twenty-five dollars, and not exceeding one hundred dollars, one vote; and b) For every claim over one hundred dollars, and not exceeding three hundred dollars, two votes; and c) For every claim over three hundred dollars, and not exceeding six hundred dollars, three votes; and d) For every claim over six hundred dollars, and not exceeding one thousand dollars, four votes; and e) For every additional one thousand dollars, or portion thereof, one vote: Provided, however, that in case any question arises respecting the claim of any creditor, or respecting the securities held by any creditor, such creditor shall not be allowed to vote on such question.

**Casting vote. 22.** In case of a tie the assignee, or if there are two assignees, then the assignee nominated for that purpose by the creditors, shall have a casting vote.

**Resolution at first meeting of creditors requiring assignee to transfer estate. 23.** At the first meeting of creditors, or at any subsequent meeting, a majority in votes of the creditors present in person or by proxy may pass a resolution requiring the assignee to transfer the estate to some other person named in such resolution as assignee, then and in such case the said original assignee shall forthwith deliver over to such person the property and effects belonging to the estate, and execute all conveyances, assignments, and transfers necessary to vest the said estate in said assignee, and thereupon such person so named shall become and be the assignee of such estate under the provisions of this Act.



**Remuneration of original assignee upon transfer of estate.** 24. Said original assignee shall, in case of such change, be entitled to be paid such remuneration as the creditors may at the meeting at which such change is made decide, subject to an appeal to the District Registrar of the Supreme Court for the district in which the assignment is registered. In case the creditors do not settle the said remuneration as aforesaid, then such District Registrar shall have power to do so on application by the original assignee on notice to the new assignee.

**Verification of resolution requiring change of assignee. Registration of resolution.** 25. A copy of said resolution mentioned in section 23, signed by the chairman or other presiding officer of the meeting and verified by an affidavit of some person present at the meeting, setting forth the names of the creditors present in person or by proxy at said meeting, and the result of the vote on the resolution, may be registered in any Land Registry Office or Land Titles Office, and when so registered shall have the effect of vesting in such new assignee all the real estate situate in the district of such office which the debtor vested in the original assignee by virtue of the deed of assignment, and such resolution so verified may be registered in any office provided for the registration of bills of sale, and when so registered shall the effect of vesting in such new assignee all the personal property situate in the county of such office which the debtor vested in the original assignee by virtue of the assignment.

**Removal of assignee by Judge of Supreme Court.** 26. Any Judge of the Supreme Court may, on the application of any creditor of the debtor, made by petition, supported by the affidavit of the applicant, remove any person who for the time being shall be entitled to act under any trust declared in or created by any such assignment as aforesaid, from the office of assignee, and appoint another person as assignee in the place of the person so removed, and also, with the consent of a majority in number representing three-fourths in value of the creditors of the debtor, expunge from any such assignment any condition or stipulation therein contained, or with the like consent alter or vary any trust in or by the assignment declared or created, and the costs of and incidental to any such application shall be a charge on and paid out of the trust estate, unless otherwise ordered by the Judge.

*Semble*, even in the absence of statute a Court of Equity has power to remove a trustee. Where an assignee is also employed as a solicitor to manage the insolvent estate, his interest as solicitor conflicts with his duty as assignee, and the Court may remove such a person. — *In re Dickinson*, (1892), 2 B. C. 262.

**Mode of transfer where assignee neglects or refuses to transfer.** 27. In case any such assignee refuses or neglects to deliver over to such new assignee so appointed by the creditors, or a Judge, any of the property of the estate, or refuses or neglects to execute any document required for the purpose of vesting such property in such new assignee, a Judge of the Supreme Court of British Columbia may, on the application of such new assignee, or of any creditor of such estate for one hundred dollars or more, make an order calling upon such assignee to deliver over such property, or to execute such document or documents, and to pay the costs of such application, and failure to obey such order shall be punished by committal.

**Publication of resolution for transfer.** 28. The resolution, referred to in section 23, shall be published in one issue of the *British Columbia Gazette* as soon as it conveniently can be after being passed.

**Verified copy of resolution as evidence.** 29. The production of a resolution of the creditors, verified as aforesaid, shall in all Courts of Justice be taken as *prima facie* evidence of the vesting of the debtor's estate in the assignee.

**Application to certain assignments executed before 17th April, 1896, and to all assignments executed after that date. Statement of security in proof of claim. Negotiable instruments. Judge may order claim to be proved within certain time. Saving effect of Trustees and Executors Act. Contest of claim by assignee. Procedure. Address for service of writ. Claims for interest.** 30. The provisions of this section shall apply to all assignments executed after the 17th day of April, 1896, and to any estate which on the 17th day of April, 1896, remained undistributed in the hands of any assignee under any assignment theretofore executed; but the said provisions shall not be deemed to refer to any estate which had been partially distributed, or affect or prejudice any act done, or any payment or distribution of assets made, by any such assignee, prior to the said 17th day of April, 1896: a) Every creditor in his proof of claim shall state whether he holds any security for his claim, or any part thereof, and if such security is on the estate of the debtor or on the estate of a third party

for whom such debtor is only secondarily liable, he shall put a specified value thereon; and the assignee, under the authority of the creditors, may either consent to the right of the creditor to rank for the claim after deducting such valuation, or he may require from the creditor an assignment of the security at the specified value, to be paid, together with interest thereon at the legal rate from the date filing the claim until payment, out of the estate as soon as the assignee has realised such security, and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect of the estate. Before assigning such security such creditor shall be entitled to receive security from such assignee for the value of such security so to be assigned. In case of any dispute a Judge of the Supreme or County Court may settle the same on a summary application; b) If a creditor holds a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof, but after the maturity of such liability and its non-payment he shall be entitled to amend and re-value his claim; c) In case a person claiming to be entitled to rank on the estate assigned does not, within a reasonable time after receiving notice of the assignment and of the name and address of the assignee, furnish to the assignee satisfactory proofs of his claim as provided by this Act, a Judge of the Supreme or County Court may, upon the summary application by the assignee, or by any other person interested in the debtor's estate (of which application at least three days' notice shall be given to the person alleged to have made default in proving a claim as aforesaid), order that unless the claim be proved to the satisfaction of the Judge within a time to be limited by the order, the person so making default shall no longer be deemed a creditor of the estate assigned, and shall be wholly barred of any right to share in the proceeds thereof; and if the claim is not so proved within the time so limited, or within such further time as a Judge may by subsequent order allow, the same shall be wholly barred, and the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the debtor therefor; d) The preceding subsection is not intended to interfere with the protection afforded the assignee by the *Trustees and Executors Act*; e) At any time after the assignee receives from any person claiming to be entitled to rank on the estate proof of his claim, notice of contestation of the claim may be served by the assignee upon the claimant. Within thirty days after the receipt of the notice, or such further time as a Judge of the Supreme or County Court may on application allow, an action shall be brought by the claimant against the assignee to establish the claim, and a copy of the writ in the action served on the assignee; and in default of such action being brought and writ served within the time aforesaid, the claim to rank on the estate shall be forever barred; f) The notice by the assignee shall contain the name and place of business of one of the solicitors of the Supreme Court, upon whom service of the writ may be made; and service upon such solicitor shall be deemed sufficient service of the writ; g) Except as provided in subsection (a) hereof, no creditor shall be entitled to rank upon the estate for or in respect of any claim for interest for any subsequent to the date of the assignment, until after all claims for principal money, and all claims for interest on such principal money (where interest is by law payable thereon) calculated down to the date of the assignment, have been fully paid and satisfied.

**Assignee to call meeting upon request. 31.** In case of a request in writing, signed by a majority of the creditors having claims, duly proved or admitted, of fifty dollars and upwards, computed according to the provisions of section 21 of this Act, it shall be the duty of the assignee, within two days after receiving such request, to call a meeting of the creditors, for a day not later than fourteen days after such request is received.

**Remuneration of assignee. 32. 1.** The permanent assignee shall be entitled to such remuneration as may be voted to him by the creditors, subject to an appeal to a District Registrar of the Supreme Court. In case no remuneration is voted by the creditors, at the first meeting of creditors, or at the meeting at which such permanent assignee is appointed, such remuneration shall be settled by a District Registrar on notice to the Inspectors. There shall be an appeal from the decision of the District Registrar either by the assignee or the Inspectors, or any creditor on behalf



of the creditors, to a Judge of the Supreme Court. Notice of such appeal must be given within four days after the decision of the District Registrar. 2. Such remuneration shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised and the other part on the amount distributed in dividends. 3. The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the debtor's estate or to the creditors in respect of any expenses which the remuneration is expressed to cover. 4. An assignee shall not, under any circumstances whatever, make any arrangement for, or accept from the assignor or any solicitor, auctioneer, or any other person that may be employed about an assignment, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration paid by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as assignee, manager, or trustee, to the assignor or any solicitor or other person that may be employed about an assignment.

Remuneration fixed at five per cent. — *An re Ley*, (1900), 7 B. C. 94.

**Inspectors. 33.** At the first or any subsequent meeting the creditors may appoint one or more of their number, but not exceeding three, as Inspectors, who shall superintend the proceedings of the assignee and the management and winding up of the estate, and they may also revoke the appointment of any or all of the Inspectors, and upon such revocation or in case of the death, resignation, or absence from the Province of an Inspector, may appoint another in his stead, and anything to be done by the Inspectors may be done by the majority, or by the sole Inspector if there is only one. The Inspectors shall not be entitled to any remuneration.

**Application of Trustees and Executors Act. 34.** The provisions of the *Trustees and Executors Act* relating to: a) The payment of debts and claims, the accepting of any composition, or of any security, real or personal, for any debts, the allowing of time for payment of debts, and the submission to arbitration of any matters affecting a trust or trust estate; b) The distribution of assets after due notice given, without liability to creditors having claims of which no notice has been received; and c) The right to apply to a Judge of the Supreme Court for opinion and advice in the management of the trust estate shall apply to and shall be construed so as to include an assignee acting under assignments under this Act: Provided, however, that such assignee must obtain the approval of the creditors before acting.

**Registration of order by Judge appointing new assignee. 35.** In the case of the appointment by a Judge of a new assignee a copy of the order may be registered as provided in section 25 and with the same effect.

**Wages. 36.** Whenever an assignment is made of any real or personal property for the general benefit of creditors, the assignee shall pay in priority to all claims of the ordinary or general creditors of the person making the same, the wages or salary of all persons in the employment of such person at the time of making such assignment, or within one month before the making thereof, not exceeding three months' wages or salary, and such persons shall be entitled to rank as ordinary general creditors for the residue, if any, of their claims.

Where an assignment is made on 27th November, a workman whose employment terminated on 26th October preceding, is not entitled to a preference under this section. — *In re Clayo-quot Fishing & Trading Co.*, (1902), 9 B. C. 80. Where a workman is employed and receives compensation both by way of salary and for piece work, the preference must be restricted to the salary. — *Tam v. Robertson*, (1903), 9 B. C. 505.

**Application of preceding section. 37.** The preceding section shall apply to wages or salary, whether the employment in respect of which the same shall be payable be by the day, by the week, by the job or piece, or otherwise.

**Compromising debts. 38.** The assignee may with the approval of the creditors compromise all debts and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages subsisting or supposed to subsist both to and by the debtor upon the receipt of payment of such sums, payable at such times and generally upon such terms as are agreed upon.

**Deposit of moneys received by assignee. 39.** All moneys received by the assignee on account of the estate shall forthwith be paid by him into a chartered bank, to be named by the creditors, to the credit of a special account for the estate, and at every meeting of the creditors the bank book shall be produced by the assignee and shall always be open to inspection by the Inspectors or any creditor. The assign-

nee shall not in any case pay money received by him on account of the estate into his private account at any bank.

**Payments by debtor made 30 days before execution of assignment void. 40.** Every payment made within ten days next before the execution of an assignment under this Act by the debtor on account of a pre-existing debt shall be void, and the amount so paid may be recovered back from the person to whom it was paid by the assignee by suit in any Court of competent jurisdiction, but if any valuable security was given up in consideration of such payment such security or the value thereof must be restored or credited to the creditor: Provided, however, that no payment for wages (not exceeding three months), or for rent, taxes, or water rates, which are a lien on the property of the debtor, shall be affected by this section.

**Solicitor to estate. 41.** At any meeting of creditors a resolution may be passed directing the assignee to employ a person or firm named in the resolution as solicitor or solicitors to the estate, and thereafter no other solicitor shall be employed by the assignee. Such appointment of solicitor may be changed at any meeting of the creditors by resolution. No such solicitor, after his appointment, shall act in any way for the debtor as long as he continues to act as solicitor for the estate.

**Qualifications of assignee and his deputies. 42.** No person other than a permanent and bonâ fide resident of this Province shall have power to act as an assignee under this Act, nor shall an assignee under this Act have power to appoint as deputy or delegate his duties as assignee to any person who is not a permanent and bonâ<sup>1)</sup> resident of this Province, and no charge shall be made or recoverable against the assignor or his estate for any services or expenses of any such assignee, deputy, or delegate of any assignee, who is not a permanent and bonâ fide resident of this Province.

**Vesting effect of assignment. 43.** Every assignment hereafter executed for the general benefit of creditors, whether the assignment is or is not expressed to be made under or in pursuance of this Act, and whether the debtor has or has not included all his real and personal estate, shall vest the estate, whether real or personal or partly real and partly personal, thereby assigned in the assignee therein named for the general benefit of creditors, and such assignment and the property thereby assigned shall be subject to all the provisions of this Act, and the provisions of this Act shall apply to the assignee named in such assignment.

**Assignee's accounts. 44.** Upon the expiration of one month from the date of assignment, and afterwards from time to time at intervals of not more than three months, the assignee shall prepare, and keep constantly accessible to the creditors, accounts and statements of his doings as such assignee, and of the position of such estate.

**Dividends. 45.** From time to time, whenever there is sufficient money on hand for that purpose, the assignee shall declare and pay a dividend of ten per cent. or more on the claims of creditors. Before any dividend is paid, a dividend sheet shall be prepared, showing all claims allowed and all claims (if any) objected to, and showing an abstract of receipts and disbursements, and such dividend sheet shall be certified to by the assignee and the Inspectors (if any).

**Interest. 46.** All sums received by the assignee for interest on moneys belonging to the estate shall belong to the estate.

**Debtor to give information to assignee. Compensation to debtor for his services. 47.** 1. The debtor shall give such information to the assignee or Inspectors respecting his estate and affairs, attend at such times on the assignee or Inspectors and at such meetings of his creditors, execute at the expense of the estate such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and to the distribution of the proceeds thereof amongst his creditors as are reasonably required by the assignee or Inspectors; and he shall aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds thereof among his creditors. 2. The assignee may from time to time, with the consent of the creditors, make such allowance as he thinks just to the debtor out of the estate as compensation for his services in connection with the winding-up of his estate.

**Examination of debtor. Time, place, and adjournment of examination. Examination may be by counsel. Committing debtor for refusing to appear or to answer questions. 48.** 1. The creditors or the Inspectors may direct the debtor to be examined

<sup>1)</sup> *Sic*; obviously "fid." should be inserted.



upon oath before the assignee, or before such Judge of the Supreme or County Court as they may name, touching his estate and effects, assets and liabilities, the conduct and management of his business, the causes of his insolvency, and his affairs generally; and such assignee or Judge may administer any necessary oath. 2. Such examination shall take place at such time and place as is appointed by the Judge on application by the creditors, or by the Inspectors, and it may be adjourned from time to time; but a Judge of the Supreme or County Court may, on the application of any person interested, and on being satisfied that the affairs of the debtor have been sufficiently investigated, make an order directing that the examination be concluded by such time as is named in the order. 3. Such examination may be conducted by counsel or by such persons as are appointed by the creditors or Inspectors, and notes of the evidence given at such examination, which may be taken in shorthand, shall be deposited with the assignee and shall be open to inspection, without charge, by any creditor or by the duly authorised representatives of any creditor. 4. In case the debtor neglects or refuses to appear or to be sworn, or to answer any proper question, a Judge of the Supreme or County Court may, on the application of the assignee or of any person interested, order that the debtor be committed as for a contempt of court, and may make such order as to the payment of the costs of any application under this section as to him seems right.

**Examination of persons other than debtor touching estate. Apprehension of such persons refusing to attend. Procedure upon such examination. Ordering such persons to deliver up property belonging to estate. Committing such persons for contempt.**

49. 1. A Judge of the Supreme or County Court may, on the application of the assignee, or of a creditor having an unsecured claim of one hundred dollars or upwards, summon before him any person, including the husband or wife of the debtor, known or suspected to have in his possession any of the estate or effects of the debtor, or any person who is represented to such Judge as capable of giving information concerning the debtor, his dealings or property, and such Judge may require any such person to produce any documents in his custody or power, or under his control, relating to the debtor, his dealings or property. 2. If the person so summoned, after having been tendered the ordinary witness fees allowed in suits before the Court, without reasonable excuse refuses to come before the Judge at the time appointed, the Judge may, by warrant, cause him to be apprehended and brought before him. 3. Such person may be examined upon oath concerning the debtor, his dealings or property, by or before the Judge, or by or before such person and in such manner as the Judge directs, and such Judge or person may administer any necessary oath; and notes of the evidence given at any such examination, which may be taken in shorthand, shall be deposited with the assignee and shall be open to inspection, without charge, by any creditor, or the duly authorised representative of any creditor; and the Judge may make such order as to the payment of the costs of any such examination as to him seems right. 4. If on such examination such person admits that he has in his possession any property belonging to the debtor, and to which the assignee is legally entitled, the Judge may order him to deliver to the assignee such property, or any part thereof, at such time, in such manner, and on such terms as seems just. 5. In case of refusal to appear, or to be sworn, or to answer any questions that may lawfully be asked touching the debtor, his dealings or property, or to produce any document which he is required to produce, or to obey any order of the Judge made under and by virtue of this section, the person so refusing may be committed as for a contempt of court.

**Arrest of debtor. Affidavit leading to order for arrest.** 50. A Judge of the Supreme or County Court may, at any time after the execution of an assignment under this Act, on the application of the assignee or any creditor having a claim for one hundred dollars or more against the assignor, by warrant to the sheriff of the county, or other proper officer, cause the debtor to be arrested, and any books, papers, moneys, and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Judge orders, if such facts and circumstances are shown by affidavit as satisfy the Judge: a) That there is good and probable cause for believing that the debtor is about to abscond and conceal himself to avoid appearance at any meeting of his creditors at which he is required to appear, or to avoid examination in respect of his affairs, or otherwise to avoid, delay, or embarrass any proceedings against him under this Act; or b) That there is good and probable cause for believing that he is about to remove his goods with intent to prevent or delay

possession being taken of them by the assignee, or that he has concealed or destroyed, or is about to conceal or destroy, any of his goods or money, or any books, documents, or writing which might be of use to his creditors in the course of the proceedings under this Act; or c) That, without good cause shown, he has failed to attend any meeting or examination which he was required to attend under the provisions of this Act.

**Rescission of contracts in fraud of creditors. 51.** Where there is any assignment under this Act the assignee, save as herein otherwise provided or implied, shall have an exclusive right of suing for the rescission of agreements, deeds, and instruments, or other transactions made or entered into in fraud of creditors, or made or entered into in violation of this or any other Act.

**When and how creditors authorised to sue. 52.** If at any time any creditor desires to cause any proceeding to be taken which in his opinion would be for the benefit of the estate, and the assignee refuses or neglects to take such proceedings after being duly required so to do, such creditor so desiring shall have the right to obtain an order of the Judge aforesaid authorising him to take such proceedings in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the Judge may prescribe, and thereupon any benefit derived from such proceedings shall belong exclusively to the creditor instituting the same for his benefit; but if before such order is granted the assignee shall signify to the Judge his readiness to institute such proceedings for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from such proceedings, if instituted within such time, shall appertain to the estate.

**Disposal of estate. 53.** The creditors may at any meeting pass any resolution or order directing the assignee how to dispose of the estate, or any part thereof, and in default of their so doing he shall, subject to the directions, order, and instructions he may from time to time receive from the Inspectors (if any) with regard to the mode, terms, and conditions on which he may dispose of the whole or any part of the estate, sell and dispose of the same in such manner as seems to him most advantageous in the interests of the estate, subject always to the provisions of this Act; but the assignee, or any Inspector or the solicitor of the estate, shall not purchase, directly, or indirectly, any part of the stock in trade, debts or any assets of any description of the estate.

**Leases. 54. 1.** If the debtor, at the date of the assignment, is a tenant of property, the assignee shall, notwithstanding any condition, covenant, or agreement that such tenancy shall determine in case of the bankruptcy or insolvency of the tenant, have the right to hold and retain such property for a period not exceeding three months from the date of the assignment, or until the expiration of the tenancy, whichever shall first happen, on the same terms and conditions as the debtor might have held such property had no assignment been made. **2.** If the debtor at the date of the assignment is a tenant of property, the tenancy of which is not determined by his insolvency, the assignee, under the authority of the creditors, may give notice in writing to the lessor of his wish to determine the same at the expiration of three months from the giving of such notice, and such tenancy shall terminate at the expiration of such three months; but nothing herein shall prevent the assignee, under the authority of the creditors, from selling, transferring, or otherwise disposing of any lease or leasehold premises, or any interest of the debtor therein, for the unexpired term thereof, or any part thereof, to as full an extent as could have been done by the debtor had an assignment not been made; and if there is any covenant, condition or agreement that the lessee or his assigns should not assign or sub-let the property without the leave or consent of the lessor, or other person, such covenant, condition or agreement shall be of no effect in case of such sale, transfer, sub-lease, or disposition of the lease or leasehold property as aforesaid, if a Judge of the Supreme Court, on the application of the assignee, and after notice of such application to the lessor or other person whose leave or consent is required, approve of the sale, transfer, sub-lease, or disposition so made of the lease or leasehold property. **3.** The lessor may, in the event of the tenancy being determined by the assignee by notice in manner hereinabove provided, file a claim against the debtor's estate for the damages (if any) sustained in consequence of such termination, which claim shall be proved in a similar manner to ordinary claims against the estate; and in his proof of claim he shall set forth the amount of damages claimed and how such amount is arrived at; and any



such claim may be objected to in the same manner as herein provided in regard to claims made against the estate; and the lessor, on his claim being established or allowed, shall have all the rights of voting and otherwise enjoyed by ordinary unsecured creditors who have proved claims against the estate. 4. In estimating such damages, regard shall be had to the rental payable under the tenancy so determined, and to the yearly value of the property at the time of such termination, and regard shall also be had to the additional value given to the property by any buildings, fixtures, or improvements placed thereon by the debtor, or those through whom he claims, but no regard shall be had to the chance of leasing the property at a greater or less rent than that payable by the debtor or his estate at the time of the termination of the tenancy. 5. The lessor shall have a privileged claim against the estate of the debtor for arrears of rent due or accruing due in respect of the six months next preceding the date of the assignment, together with all costs of distraint properly made before the date of assignment in respect to the rent or any part of the rent hereby made a privileged claim, but for all other arrears of rent he shall have a claim provable against the estate as an ordinary creditor. He shall also have a privileged claim against the estate for all rent accruing due after the date of assignment during the period the property and premises are held by the assignee. 6. The lessor shall not be entitled to distraint upon the goods of the assignee after they become vested in the assignee, and all goods then distrained upon shall, on demand, be delivered by the person holding them to the assignee, but the lessor shall not by reason of such delivery be deprived of any lien or rights in reference to such goods which he may have acquired by such distress, should the goods be claimed by and be delivered to any person other than the assignee. 7. The lessor shall not be entitled to any further or other rent from the debtor or from his estate than as set forth in this section.

For a case where, under the circumstances, the landlord was held not entitled to a preferential claim for rent accruing due after the assignment, see *Gold v. Roffs*, (1903), 10 B. C. 80.

**Disclaimer of liability for shares, stocks, etc. 55.** 1. When any part of the property of the debtor consists of shares or stock in companies or unprofitable contracts, or of any other property that is not saleable or readily saleable by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of a sum of money, the assignee may, with the authority of the creditors, by writing under his hand, disclaim such property at any time within six months from the date of his appointment, notwithstanding that he has endeavoured to sell, or has taken possession of such property, or has exercised any act of ownership in relation thereto: Provided that when any such property has not come to the knowledge of such assignee within six months after his appointment he may disclaim such property at any time within six months after he first became aware thereof. 2. Such disclaimer shall operate to determine, as from the date thereof, the rights, interests, and liabilities of the debtor and his property in or in respect of the property disclaimed, and shall also discharge the assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the debtor and his property and the assignee from liability, affect the rights or liabilities of any other person. 3. The assignee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the assignee, by any person interested in the property, requiring him to decide whether he will disclaim or not, and the assignee has, for a period of one month after the receipt of such application, or such extended period as may be allowed by a Judge of the Supreme Court, declined or neglected to give notice whether he disclaims the property or not; and in the case of a contrast, if the assignee, after such application as aforesaid, does not, within the said period or extended period, disclaim the contract, he shall be deemed to have adopted it. 4. A Judge of the Supreme Court may, on the application of any person who is, as against the assignee, entitled to the benefit or subject to the burden of a contract, made with the debtor, make an order rescinding the contract, on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Judge may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt provable under this Act against the estate of the debtor. 5. A Judge of the Supreme Court may, on application by any person either claiming an interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as he thinks fit, make an order for the vesting of the

property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Judge thinks just; and on any such vesting order being made the property comprised therein shall vest accordingly in the person named therein in that behalf without any conveyance or assignment for the purpose. 6. Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the debtor to the extent of the injury, and may prove the same as a debt provable under this Act against the estate of the debtor. 7. The provisions of this section shall not extend to leases or leasehold property.

**Dividends at time of discharge of assignee. 56.** All dividends remaining unclaimed at the time of the discharge of the assignee shall be paid over the Minister of Finance, and if afterwards claimed shall be paid over to the person entitled thereto.

**Balance of estate after payment of claims. 57.** If any balance remains of the estate of the debtor, or of the proceeds thereof, after the payment in full of all his debts and liabilities and the costs of winding up his estate, such balance shall be paid or transferred to the debtor.

**Discharge of assignee. 58.** After the declaration of the final dividend the assignee shall prepare his final account and make application to a Judge of the Supreme Court for his discharge, giving at least ten days' previous notice of such application to the debtor, and to the inspectors (if any) and to the creditors by circular; and he shall produce and file, on such application, a bank certificate of the deposit of any dividends remaining unclaimed, and of any balance in his hands, and also a statement, under oath, showing the nominal and realised value of the assets of the insolvent, the amount of claims proved, dividing them into classes according to the nature thereof, the amount and rate upon the dollar of dividends paid to the creditors, and the entire expense of winding up the estate. The Judge may, after causing the accounts of the assignee to be audited by the inspectors, or by such creditor, or by such competent person as he may name, and after hearing all parties interested, grant, conditionally or unconditionally, the application for discharge or refuse it, and may make any order as to costs which he thinks proper.

**Retention by debtor of any portion of estate after assignment. 59.** If after the date of the assignment the debtor retains or receives any portion of his estate or effects, or of any moneys, securities for money, business papers, documents, books of account or evidences of debt, belonging or appertaining to his business or estate, and retains and withholds the same from the assignee, without lawful right, the assignee may apply to a Judge of the Supreme or County Court for an order for the delivery thereof to him, and in default of delivery in conformity with such order the debtor may be imprisoned in the common jail until the same are delivered, or for such time, not exceeding one year, as the Judge may order; but nothing herein shall interfere with or diminish any other penalty to which, under this Act, he may be subject in consequence of the non-delivery of such property, effects, documents, or money.

**Time and place of creditors' meetings. 60.** The creditors may, at any meeting, determine where subsequent meetings shall be held, but in default of their so doing all such meetings, after the first meeting, shall be held at the office or place of business of the assignee.

**Procedure at creditors' meetings. 61.** 1. At all meetings the creditors may appoint the chairman, and in default of such appointment the assignee shall be chairman. 2. The chairman shall decide all disputes or questions that may be raised at such meetings as to the eligibility of a creditor to vote or as to the amount on which he should vote, or any other question of procedure at such meetings. 3. The chairman shall cause to be kept full minutes of all proceedings, resolutions, and decisions at such meetings, and shall include therein an accurate list of the creditors present or represented, which minutes shall be signed by him and shall be filed with and kept by the assignee, and on the final discharge of the assignee, shall be deposited with the District Registrar of the Supreme Court as ordered by the Judge granting such discharge.

**Voting. 62.** 1. A creditor shall be entitled to vote at any meeting of creditors in respect of and to the extent of his claim against the estate as determined by this Act, but such creditor shall not be entitled to vote at any meeting of creditors until he has proved his claim in manner hereinbefore provided, and if his claim is dependent upon a condition or contingency, or for other reason does not bear a certain value,



not until the value of such claim has been ascertained in manner hereinbefore provided. 2. In the case of contested claims the creditor shall, until such contestation is decided or an agreement between such creditor and the assignee is arrived at, be considered as a creditor for the amount admitted by the assignee (if any). 3. Persons purchasing claims against the estate after the date of assignment shall not be entitled to vote in respect of such claims, but shall in all other respects, unless otherwise specially provided, have the same rights as other creditors. 4. The assignee, his partner, agent, clerk, or employee, or any person in the employ of a partnership or company of which he is a member, shall not be entitled to vote upon any resolution affecting the remuneration or removal from office or the conduct of the assignee, or the security to be given by him, but on all other questions, if creditors, they may vote as such creditors.

**Proxies. 63.** Except as herein otherwise provided, no creditor shall vote at any meeting unless present personally or represented by some person having written authority, which may be by power of attorney, letter, post card, or telegraphic message, such authority to be filed with the assignee. Such authority may be either general or limited, but in no case shall the assignee, his partner, or anyone in his employ, or in the employ of a partnership or company of which he is a member, act for or represent any creditor of the estate.

**Assignee subject to summary jurisdiction of Court. 64.** Every assignee shall be subject to the summary jurisdiction of the Supreme or County Court in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction, and the Court may compel him to perform his duties, or may restrain him from taking or continuing proceedings which are not in the interest of the estate, or of the creditors generally, and obedience by the assignee to any order of the Court may be enforced by the Court under the penalty of imprisonment as for contempt of Court, and by removal from his office.

**Application to Judge to rescind resolution passed at creditors' meeting. 65.** Any one or more creditors whose claims in the aggregate exceed ten per cent. in value of all claims ranking against the estate, who are entitled to vote, and who are dissatisfied with any resolution adopted, or orders made by the creditors or the Inspectors, or with any action of the assignee for the disposal of the estate, or any part thereof, or for postponing the disposal of the estate, or any part thereof, or for the disposal of the same, or with reference to any matter connected with the management or the winding-up of an estate, or with any decision of the chairman of a meeting, may, within two days after the adoption of the resolution, or the making of the order or decision, or the performance of the action complained of, give to the assignee notice that he or they will apply to a Judge of the Supreme or County Court on the day and at the hour fixed in such notice, not being later than two days after such notice has been given, or as soon thereafter as the parties may be heard before such Judge, to rescind such resolution or order or to reverse such decision, or for such order as is indicated in such notice, and the Judge, after hearing the Inspectors, the assignee, and creditors present at the time and place so fixed, may approve of, rescind, or modify the said resolution or order, decision, or action, or make such order in the premises as to him seems proper. In case of the application not being proceeded with, or being refused, the parties appealing shall pay all costs occasioned thereby, otherwise the costs and the expenses shall be at the discretion of the Judge.

**Delegation of power to Inspectors. 66.** The creditors may generally or for a special occasion delegate to the Inspectors any of the powers conferred upon them by sections 30, subsection (a), 38, 44 and 55, subsection (2).

**Reference to Judge for directions as to matters not provided for. 67.** If any matter arises in connection with any assignment under this Act not provided for herein, such matter may be referred summarily to a Judge of the Supreme or County Court by the assignee, or the Inspectors, or by any creditor for an amount of one hundred dollars or more, and upon such application such Judge may give such directions as to notifying other parties and as to other matters as he may think proper, and may make such order as he may think fit, including the costs of the application.

**Security by assignee. 68.** At any time after an assignment is executed, the debtor, the Inspectors or any creditor for one hundred dollars or more, may apply to a Judge of the Supreme or County Court to fix the security to be given by the assignee for the faithful performance of his duties as such assignee, and for accounting for all moneys and property coming to his hands. If such order as is made by such Judge

is not carried out by such assignee, such Judge may remove him and appoint some other person in his place, and such order appointing a new assignee may be registered as provided in section 25 for the registration of a resolution of creditors, and with the same effect.

**This Act not to interfere with insolvency laws.** 69. This Act is not intended to interfere with the insolvency laws which may from time to time be in force in this Province, but this Act is intended to be subject to such laws.

**Repeal.** 70. Chapter 11 of the Revised Statutes, 1897, being the *Creditors' Trust Deeds Act*, and Acts amending the same, are hereby repealed.

**Commencement.** 71. This Act shall not come into force until proclaimed by the Lieutenant-Governor in Council.

**Registration how effected.** 72. [Added by c. 18 of 1902, § 4.] The registration of an assignment under the provisions of section 14, and of a copy of a resolution of creditors under the provisions of section 25, shall be effected by filing said documents in the respective offices mentioned in said sections.

**Registration fees.** 73. [Added by c. 18 of 1902, § 4.] For the registration of an assignment in a Land Registry Office or Land Titles Office there shall be charged a fee of two dollars, and for the registration under section 25 of a copy of the resolution of creditors requiring the assignee to transfer the estate, there shall be charged a fee of two dollars.

### b) 1902, c. 18. An Act to amend the Creditors' Trust Deeds Act, 1901 (21st June, 1902).

**Short title.** 1. This Act may be cited as the *Creditors' Trust Deeds Act, 1901, Amendment Act, 1902*.

[2—4. Amend 1901, c. 15, and are there incorporated.]

### c) 1905, c. 24. An Act respecting Assignments and Preferences by Insolvent Persons (8th April, 1905).

**Short title.** 1. This Act may be cited as the *Fraudulent Preferences Act, 1905*.

**Confessions or warrants to confess judgments, given by insolvents to defeat or delay creditors, or to give one preference over the other, to be void.** 2. In case any person, being at the time in insolvent circumstances or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntarily or by collusion with a creditor or creditors, gives a confession of judgment, *cognovit actionem*, or warrant of attorney to confess judgment, with intent, in giving such confession, *cognovit actionem*, or warrant of attorney to confess judgment, to defeat or delay his creditors wholly or in part, or with intent thereby to give one or more of his creditors of any such person a preference over his other creditors, or over any one or more of such creditors, every such confession, *cognovit actionem*, or warrant of attorney to confess judgment, shall be deemed and taken to be null and void as against the creditors of the party giving the same, and shall be invalid and ineffectual to support any judgment or writ of execution.

**Gifts, transfers, etc., made by insolvents which defeat or prejudice creditors to be void.** Transfers having effect of preference void if attacked within sixty days. **Pressure or want of knowledge on part of creditor not to save the transaction.** 3. 1. Subject to the provisions of section 4 of this Act, every gift, conveyance, assignment, transfer, delivery over, or payment of goods, chattels or effects, or of bills, bonds, notes, or securities, or of shares, dividends, premiums, or bonus in any bank, company, or corporation, or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, shall: a) If made with intent to defeat, hinder, delay, or prejudice his creditors or any one or more of them, be, as against the creditor or creditors injured, delayed, or prejudiced, utterly void; and b) If made to or for a creditor with intent to give such creditor preference over his other creditors or over any one or more of them, be, as against the creditor or creditors injured, delayed, prejudiced, or postponed, utterly void. 2. Subject to the



provisions of section 4 aforesaid, every such gift, conveyance, assignment, or transfer, delivery over or payment as aforesaid, made to or for a creditor by a person at any time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, and which has the effect of giving such creditor a preference over the other creditors of the debtor or over one or more of them, shall: a) In and with respect to any action or proceeding which, within sixty days thereafter, is brought, had, or taken to impeach or set aside such transaction, be utterly void as against the creditor or creditors injured, delayed, prejudiced, or postponed; and b) If the debtor, within sixty days after the transaction, makes an assignment for the benefit of his creditors, be utterly void as against the assignee or any creditor authorised to take proceedings to avoid the same. 3. A transaction shall be deemed to be one which has the effect of giving a creditor a preference over the other creditors within the meaning of subsection (2) of this section, if by such transaction a creditor is given or realises, or is placed in a position to realise, payment, satisfaction, or security for the debtor's indebtedness to him, or a portion thereof, greater proportionately than could be realised by or for the unsecured creditors generally of such debtor, or upon the unsecured portion of his liabilities, out of the assets of the debtor left available and subject to judgment, execution, attachment, or other process, and such effect shall not be deemed dependent upon the intent or motive of the debtor or upon the transaction being entered into voluntarily or under pressure; and no pressure by a creditor or want of notice to the creditor alleged to have been so preferred of the debtor's circumstances, inability or knowledge as aforesaid, or of the effect of the transaction, shall avail to protect the transaction, except as provided by section 4 hereof. 4. When the word "creditor" or "creditors" occurs in subsections (1), (2) and (3) of this section, such word shall be deemed to include any surety and the indorser of any promissory note or bill of exchange who would, upon payment by him of the debt, promissory note, or bill of exchange, in respect of which such suretyship was entered into or such indorsement was given, become a creditor of the person giving the preference within the meaning of said subsections, and such word shall include a cestui que trust or other person to whom the liability is equitable only.

The doctrine of pressure which applied under the older Acts (C. S., 1888, c. 51; R. S. 1897, c. 87) is done away with by subsection (3), and the cases dealing therewith rendered obsolete. For the old law see: *Anderson v. Shorey*, (1885), 1 B. C. II. 325; *Doll v. Hart*, (1890), 2 B. C. 32; *Cascaden v. McIntosh*, (1892), 2 B. C. 268; *Stewart v. Wilson*, (1894), 3 B. C. 369; *Brown v. Jowett* (1895), 4 B. C. 44; *Edison General Electric Co. v. Vancouver, etc., Co.*, (1895), 4 B. C. 460, reversed by Privy Council, (1897), A. C. 193; *Adams v. Bank of Montreal*, (1899), 8 B. C. 314; *McClary Mfg. Co. v. Howland Sons & Co.*, (1902), 9 B. C. 479.

**Assignments for benefit of creditors and bonâ fide sales, etc., protected. Proviso. Transfer to creditor of consideration for sale invalid. Security given up upon void payment to be returned. Payment of wages protected. Exchange of securities protected. Certain assignments to be valid.** 4. 1. Nothing in the preceding section shall apply to any assignment made by a debtor for the benefit of his creditors generally under the provisions of the *Creditors' Trust Deeds Act., 1901*, for the purpose of paying, ratably and proportionately and without preference or priority, all the creditors of the debtor their just debts; nor to any bonâ fide sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties; nor to any payment of money to a creditor, nor to any bonâ fide conveyance, assignment, transfer, or delivery over of any goods, securities, or property of any kind as above mentioned, which is made in consideration of any present actual bonâ fide payment in money, or by way of security for any present actual bonâ fide advance of money, or which is made in consideration of any present actual bonâ fide sale or delivery of goods or other property; provided that the money paid, or the goods or other property sold or delivered, bear a fair and reasonable relative value to the consideration therefor. 2. In case of a valid sale of goods, securities, or property, and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor, under circumstances which would render void such payment or transfer by the debtor personally and directly, the payment or transfer, even though valid as respects the purchaser, shall be void as respects the creditor to whom the same is made. 3. In case a payment has been made which is void under this Act, and any valuable security was given up in consideration of the payment, the creditor shall be entitled to have the security restored or its value made good to him before, or as a condition of, the return of the payment. 4. Nothing herein

contained shall affect a claim for wages or salary under the provisions of the *Creditors' Trust Deeds Act, 1901*, and amending Acts, or shall prevent a debtor providing for payment of preferred wages or salary due by him in accordance with the provisions of the said Act, or payments or securities given for the said preferred wages or salary, or any payment of money to a creditor where such creditor, by reason or on account of such payment, has lost or been deprived of or has in good faith given up any valid security which he held for the payment of the debt so paid, unless the value of the security is restored to the creditor, nor the substitution in good faith of one security for another security for the same debt, so far as the debtor's estate is not thereby lessened in value to the other creditors. Nor shall anything herein contained invalidate a security given to a creditor for a pre-existing debt where, by reason or on account of the giving of the security, an advance in money is made to the debtor by the creditor in the bonâ fide belief that the advance will enable the debtor to continue his trade or business and to pay his debts in full.

A conveyance made by collusion or upon an immoral consideration will be set aside. — *Holten v. Vanvall*, (1900), 7 B. C. 331. When a voluntary conveyance has the effect of defeating creditors, the burden of proof to show its legality is on the assignor. — *Lai Hop v. Jackson*, (1895), 4 B. C. 168; *Cunningham v. Curtis*, (1896), 5 B. C. 472. But a creditor may be estopped from contesting the validity of the conveyance. — *Boulton v. Rolls*, (1895), 4 B. C. 137. Where a settlor on the eve of engaging in a hazardous enterprise makes a voluntary settlement, the same may be set aside at the instance of persons who extended credit subsequent to the transaction. — *Lai Hop v. Jackson*, (1895), 4 B. C. 168.

**Following proceeds of property fraudulently transferred. 5.** In the case of a gift, conveyance, assignment or transfer of any property real or personal, which in law is invalid against creditors, if the person to whom the gift, conveyance, assignment, or transfer was made shall have sold or disposed of, realised, or collected the property or any part thereof, the money or other proceeds or the amount or value thereof, may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery, or payment was made.

**Repeals R. S. 1897, c. 87. 6.** Chapter 87 of the Revised Statutes, 1897, being the *Fraudulent Preference of Creditors Act*, is hereby repealed.

### III. Manitoba.

#### Law in force.

The law of England as in force at the date of the Hudson's Bay Company's charter, 1670, was operative in the territory now comprised in the Province of Manitoba until 1870<sup>1</sup>). By an Ordinance of 11th April, 1862, it was provided that "in place of the laws of England of the date of the Hudson's Bay Company's charter, the laws of England of Her Majesty's accession, so far as they may be applicable to the Colony, shall regulate the proceedings of the General Court till some higher authority or this Council itself shall have expressly provided, either in whole or in part, to the contrary." This was amended 7th January, 1864, as follows: "To remove all doubts as to the true construction of the Code of 11th April, 1862, the proceedings of the General Court shall be regulated by the laws of England, not only of the date of Her present Majesty's accession, so far as they may apply to the condition of the Colony, but also by such laws of England of subsequent date as may be applicable to the same; in other words the proceedings of the General Court shall be regulated by the existing laws of England for the time being, in as far as the same are known to the Court, and are applicable to the conditions of the Colony"<sup>2</sup>).

<sup>1</sup>) *Sinclair v. Mulligan*, (1888), 5 Man. 17, overruling *Keating v. Moises*, (1883), 2 Man. 47. *Sinclair v. Mulligan* is followed in *Templeton v. Stewart*, (1893), 9 Man. 487. See also *In re Tait*, (1890), 9 Man. 617. — <sup>2</sup>) Cons. St. Man. 1880, p. LXXIX.



Under the Manitoba Act, 34 Vic. c. 2, establishing a Supreme Court in the Province, it was provided that "as far as possible consistently with the circumstances of the country, the laws of evidence and the principles which govern the administration of justice in England shall obtain in the Supreme Court of Manitoba."

In 1874 a provincial Act<sup>1)</sup> was passed providing that "the Court of Queen's Bench shall decide and determine all matters of controversy relative to property and civil rights according to the laws existing, or established and being in England, as such were, existed, and stood on the 15th day of July, 1870, so far as the same can be made applicable to matters relating to property and civil rights in this Province." This statute is at present in force, in substantially the same form<sup>2)</sup>, and is uniformly treated as introducing into Manitoba the law of England as it stood at the date mentioned<sup>3)</sup>. It would, however, be limited to such laws as were within the competence of a provincial legislature under the British North America Act. To remedy this defect a Dominion Act<sup>4)</sup> was passed putting the English law as it existed at the same date, in so far as applicable, except as modified by an Act of Parliament of the United Kingdom applicable in Manitoba, or by an Act of the Dominion Parliament.

## Statutes.<sup>5)</sup>

### Application of Law.

#### a) R. S. C. 1906, c. 99. An Act respecting the Province of Manitoba.

**Laws in force in Manitoba.** 6. Subject to the provisions of this Act, the laws of England relating to matters within the jurisdiction of the Parliament of Canada as the same existed on the fifteenth day of July, one thousand eight hundred and seventy, were from the said day and are in force in the Province, and in so far as the said laws have not been or are not hereafter repealed, altered, varied, modified, or affected by any Act of the Parliament of the United Kingdom, applicable to the Province, or of the Parliament of Canada.

51 Vic. c. 33, § 1. And cp. R. S. M. 1902, c. 40, § 24, *infra*.

#### b) R. S. M. 1902, c. 40. An Act respecting the Court of King's Bench.

**Of what Court may hold plea.** 24. The Court may and shall, with or without a jury, as provided by law, decide and determine all matters of controversy relative to property and civil rights, both legal and equitable, according to the laws existing or established and being in England, as such were, existed, and stood on the fifteenth day of July, in the year one thousand eight hundred and seventy, so far as the same can be made applicable to matters relating to property and civil rights in this Province . . . . .

58 & 59 Vic. c. 6, § 24. And cp. R. S. C. 1906, c. 99, § 6, *supra*.

## Partnership.

#### R. S. M. 1902, c. 129. An Act respecting the Law of Partnership.

*Short title.*

**Short title.** 1. This Act may be cited as *The Partnership Act*.

60 Vic. c. 24, § 49.

<sup>1)</sup> 38 Vic. c. 12. — <sup>2)</sup> R. S. M. 1902, c. 40, § 24, reprinted in full, *infra*. — <sup>3)</sup> Clement, *Canadian Constitution*, (2d ed.) p. 54. — <sup>4)</sup> 51 Vic. c. 33, now forming R. S. C. 1906, c. 99, § 6, reprinted in full, *infra*. — <sup>5)</sup> As in force 1st January, 1912.

*Interpretation.*

**Interpretation. 2.** In this Act, unless the context otherwise requires: a) The expression "Court" includes every Court and Judge having jurisdiction in the case; b) The expression "business" includes every trade, occupation, or profession; c) The expression "proper office" means, for the Eastern Judicial District, the office of the prothonotary of the Court of King's Bench, and, for each of the other judicial districts, the office of the deputy clerk of the Crown and pleas for such judicial district.

R. S. M. c. 114, § 2; 60 Vic. c. 24, § 45.

**Saving for rules of equity and common law. 3.** The rules of equity and of common law applicable to partnership shall continue in force, except so far as they are inconsistent with the express provisions of this Act.

60 Vic. c. 24, § 46.

*General partnerships.*

[4—47. These sections are identical in all material respects with the Imperial *Partnership Act, 1890*, (53 & 54 Vic. c. 39).]

The implied authority of a partner to sign the partnership name to a negotiable instrument is limited to doing so for the purposes of the partnership. A person taking such an instrument bearing the partnership name with knowledge that it was not executed for the purposes of the partnership must show that the partner purporting to act on behalf of the partnership was in fact authorized to bind his copartners. — *Union Bank v. Bulmer*, (1885), 2 Man. 380. A partner in a firm engaged in the lumbering business has power to borrow money for the purposes of the firm. But if the money was borrowed upon his own credit, then, even if it is applied to the purposes of the partnership business, the firm is not liable. — *Hudson's Bay Co., v. Stewart*, (1889), 6 Man. 8. Where one of two partners, without the knowledge of the other, purchases goods in his own name, intending to exclude the other partner from the contract, the latter is not liable upon the contract by ratification, although the goods are subsequently taken into the stock of the firm. — *Fraser v. Sweet*, (1900), 13 Man. 147. Where under the terms of an agreement of dissolution one partner assumed all the liabilities of the old firm, and a creditor aware of the agreement extended the time of payment to this partner, the retiring partners were released. — *Munroe v. O'Neil*, (1886), 1 Man. 245. As to liability by holding out, see *Cameron v. Cameron*, (1886), 3 Man. 308; *Richards v. Rowe*, (1887), 4 Man. 112. As to the liability of an infant partner, see *Woods v. Woods*, (1885), 3 Man. 33. As to grounds for dissolution, see *Kennedy v. Eriksen*, (1910), 13 West. L. R. 602.

*Registration of copartnerships.*

**Declaration of partnership to be signed and filed by members of copartnership.**

**48.** All persons who at the time of the coming into force of this Act are, or who hereafter may be, associated in partnership for trading, manufacturing, or mining purposes in this Province shall cause to be filed in the proper office for the judicial district in which the principal place of business of the partnership is situate, or intended to be situate, a declaration in writing signed by the several members of such copartnership: Provided, however, that if, at the time of making such declaration, any of the said members be absent from the place where they carry on or intend to carry on business, then it shall be signed by the members present in their own names, and also for their absent co-members under their special authority to that effect, such special authority to be at the same time filed and annexed to such declaration.

R. S. M. c. 114, § 3.

**New declaration not necessary. 49.** Nothing herein contained shall make it necessary for any such partnership, for which a declaration has heretofore been properly filed with the prothonotary or a deputy clerk of the Crown and pleas, to file a new declaration, except as provided in the fifty-first section of this Act.

R. S. M. c. 114, § 4.

**Declaration to contain names, surnames and residences of members, etc.**

**50.** Such declaration shall contain the names, surnames and residences of each and every partner or associate as aforesaid, and the name, style or firm under which they carry on, or intend to carry on, such business, and shall state also the time during which the partnership has existed or is to exist, also declaring that the persons therein named are the only members of such copartnership or association.

R. S. M. c. 114, § 5.

**Declaration to be filed within six months. 51.** The said declaration, if filed before the coming into force of the Act chaptered seventeen of the Consolidated Statutes, or within the time provided by that or any subsequent Act, shall stand



good; and hereafter such declaration shall be filed within six months next after the formation of any partnership; and a similar declaration shall in like manner be filed when and so often as any dissolution of partnership, or any change or alteration in the membership of such partnership, or in the name, style, or firm under which they intend to carry on business, or in the place of residence of a member of said firm, shall take place.

R. S. M. c. 114, § 6.

**Declaration to be filed by person using the term "and company."** 52. Every person who now is or hereafter may be engaged in business for trading, manufacturing, or mining purposes, and who is not associated in partnership with any other person or persons, but who uses, as his business style, some name or designation other than his own name, or who in such business uses his own name with the addition of "and Company," or some other word or phrase indicating a plurality of members in the concern, shall cause to be filed in the proper office for the judicial district in which the principal place of such business is situate a declaration of the fact in writing signed by such a person.

R. S. M. c. 114, § 7.

**Declaration to contain name, residence and style of firm, etc.** 53. The declaration last aforesaid shall contain the name, surname, addition, and residence of the person making the same and the name, style, or firm under which he carries on, or intends to carry on, business, and shall also state that no other person is associated with him in partnership; and the same be filed in manner and within the time hereinbefore provided and subject to the provisions aforesaid.

R. S. M. c. 114, § 8.

#### *Index books.*

**Prothonotary and deputy clerks to keep two alphabetical indices.** 54. It shall be the duty of the prothonotary and deputy clerks of the Crown and pleas to keep two alphabetical indices of all declarations of copartnership or business styles filed in their respective offices in pursuance of the provisions hereof.

R. S. M. c. 114, § 9.

**Prothonotary or deputy clerk to enter in firm index book name of firm.** 55. In one of such books, hereinafter called the "Firm Index Book," the prothonotary or deputy clerk of the Crown and pleas, as the case may be, shall enter in alphabetical order the styles of the respective firms and businesses in respect to which declarations have been delivered to him, and shall place opposite each entry the names of the person or persons composing such firm or carrying on such businesses and the dates of the receipt by him of the declarations, in the manner shown in the "Firm Index Book," a form of which is exhibited in Schedule A to this Act.

R. S. M. c. 114, § 10.

**Prothonotary or deputy clerk to enter in individual index book names of members.** 56. In the second of such books, hereinafter called the "Individual Index Book," contained in the form in Schedule B to this Act, the prothonotary or deputy clerk of the Crown and pleas, as the case may be, shall enter in alphabetical order the names of the respective members of each of such firms, and of the persons carrying on each such business, and shall place opposite such entry the styles of the firms of which such persons are members, or of the businesses so carried on, and the dates of the receipt of the declarations, in the manner shown in the "Individual Index Book" in the form in Schedule B to this Act.

R. S. M. c. 114, § 11.

#### *Effect of non-registration.*

**Each partner failing to comply with Act to forfeit \$ 100. Half of penalty to belong to Crown, the other half to party suing.** 57. Each and every member of any partnership or association as aforesaid, and each and every person carrying on business as mentioned in the fifty-second section of this Act, who shall fail to comply with the requirements aforesaid, shall forfeit the sum of one hundred dollars, to be recovered before any Court of competent jurisdiction, by any person suing as well on his own behalf as on behalf of His Majesty; and half of such penalty shall belong to the Crown for the use of the Province, and the other half to the party suing for the same, unless the suit be brought, as it may be, on behalf of the Crown only, in which case the whole of the penalty shall belong to His Majesty for the use aforesaid.

R. S. M. c. 114, § 12.

**Allegations not controvertible against any party signing.** 58. The allegations made in the declaration aforesaid shall not be controvertible, as against any party, by any person who shall have signed the same, nor, as against any party not being a member of the partnership, by any person who shall have signed the same or who was really a member of the partnership therein mentioned at the time such declaration was made.

R. S. M. c. 114, § 13.

**If declaration not filed, action may be brought against individual members.** 59. If any persons shall be, or shall have been associated as partners or associates for the purpose of trade or other business and shall so have carried on trade or other business in the Province, and no declaration shall have been filed as aforesaid with regard to partnership or association, then any action which might be brought against all the members of the partnership or association may also be brought against any one or more of them as carrying on or as having carried on business jointly with others in this Province, without naming such others in the writ or pleading, under the name and style of their said copartnership, firm, or association; and if judgment be recovered against him or them, any other partner or partners, associate or associates, may be sued jointly or severally on the original cause of action on which such judgment shall have been recovered. a) Provided, always, that, if any such action be founded on any obligation or instrument in writing in which all or any of the partners bound by it shall be named, then all the partners named therein shall be made parties to such action; b) Provided, also, that the action may be brought as provided by *The County Courts Act* or the Rules under *The King's Bench Act*, according as it is in a County Court or in the Court of King's Bench.

R. S. M. c. 114, § 14.

**Enforcement of judgments.** 60. Any judgment recovered under the last preceding section against any member of such existing copartnership, for a partnership, debt or liability, shall and may be executed by process of execution against all and every the partnership stock, property, assets, and effects, in the same manner and to the same extent as if judgment had been recovered against all the members of the copartnership in the usual way.

R. S. M. c. 114, § 15.

#### *Limited partnership.*

**Limited partnership may be formed.** 61. Limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business within the Province of Manitoba may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities, hereinafter mentioned, but no such partnership shall be formed for the purpose of banking or effecting insurance.

R. S. M. c. 114, § 16. Where the provisions relating to limited partnerships are not strictly complied with, all persons engaged in the enterprise become liable as general partners, even though they do not have under the agreement power to bind their copartners. — *Slingsby Mfg. Co. v. Geller*, (1904), 17 Man. 120.

**Of whom to consist.** 62. Such partnerships may consist of one or more persons, who shall be called "general partners," and of one or more persons who contribute in actual cash payments a specific sum or specific sums as capital to the common stock, who shall be called "special partners."

R. S. M. c. 114, § 17.

**General and special partners, liability of.** 63. General partners shall be jointly and severally responsible as general partners are by law; but special partners shall not be liable for the debts of the partnership beyond the amounts by them respectively contributed to the capital.

R. S. M. c. 114, § 18.

**General partners only to transact business, etc.** 64. The general partners only shall be authorized to transact business and sign for the partnership and to bind the same.

R. S. M. c. 114, § 19.

**Certificate to be signed, contents of.** 65. The persons desirous of forming such partnerships shall make and severally sign a certificate, which shall contain: a) The partnership name or firm under which the partnership is to be conducted; b) The general nature of the business intended to be transacted; c) The names of all the general and special partners interested therein, distinguishing which are general



and which are special partners, and their usual places of residence; d) The amount of capital stock which each special partner has contributed; e) The period at which the partnership is to commence and the period at which it will terminate.

R. S. M. c. 114, § 20.

**Form of. 66.** The certificate shall be in the following form, and be signed by the several persons forming such partnership before a notary public, who shall duly certify the same, namely:

We, the undersigned, do hereby certify that we have entered into copartnership under the style or firm of (B. D. & Co., as grocers and commission merchants) which firm consists of A. B., residing usually at \_\_\_\_\_, and C. D., residing usually at \_\_\_\_\_, as general partners, and E. F., residing usually at \_\_\_\_\_, and G. H., residing usually at \_\_\_\_\_, as special partners; the said E. F. having contributed \_\_\_\_\_ and the said G. H. having contributed \_\_\_\_\_ to the capital stock of the said partnership; which said copartnership commences on the \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine hundred and \_\_\_\_\_, and terminates on the \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine hundred and \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine hundred and \_\_\_\_\_

(Signed)

A. B.  
C. D.  
E. F.  
G. H.

Signed in the presence of me,

L. M., a notary public. [ \_\_\_\_\_ ]

R. S. M. c. 114, § 21.

**Where to be filed. 67.** The certificate so signed and certified shall be filed in the proper office of the judicial district in which the principal business of the partnership is or is to be situate and, where such principal business is not or is not to be situate in a land titles district, then also in the office of the registrar of the registration district in which such principal business is or is to be situate.

R. S. M. c. 114, § 22.

**Recording. 68.** Such certificate shall be recorded at large in a book to be kept for that purpose in each such office, which book shall be open for public inspection.

R. S. M. c. 114, § 23.

**Partnership not formed until filed. 69.** No such partnership shall be deemed to have been formed until a certificate has been made, certified, filed, and recorded as above directed; and if any false statement be made in such certificate, all the persons interested in the partnership shall be liable for all the engagements thereof as general partners.

R. S. M. c. 114, § 24.

**Certificate of continuance. Proviso. 70.** Every removal from the place originally fixed for the location of the business and every continuance beyond the time fixed for the duration of the limited partnership shall be certified, filed, and recorded in the manner herein required for its original formation; and every partnership otherwise renewed or continued shall be deemed a general partnership: Provided, always, that, on the renewal of any such partnership, the interest in the stock, assets and debts of any limited partner, as the same may be found to be, or such portion as shall be agreed to remain in the partnership as part of the assets thereof, shall be held and taken to have the same effect as a cash payment under the sixty-second section of this Act.

R. S. M. c. 114, § 25.

**What alterations to be deemed dissolution. 71.** Every alteration made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership, in any manner carried on after any such alteration has been made, shall be deemed a general partnership, unless renewed as a partnership de novo, according to the provisions of the next preceding section.

R. S. M. c. 114, § 26.

**Partnership name. 72.** The business of the partnership shall be conducted under a name or firm in which the names of the general partners, or some or one of them, only shall be used; and if the name of any special partner be used in such firm with his privy, he shall be deemed a general partner.

R. S. M. c. 114, § 27.

**Liability of general partners as such. 73.** Actions or suits in relation to the business may be brought and conducted by and against the general partners in the same manner as if there were no special partner.

R. S. M. c. 114, § 28.

**Restrictions upon stock of special partners. 74.** No part of any sum which any special partner has contributed to the capital stock shall be withdrawn by him, or paid or transferred by him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest do not reduce the original amount of capital; and if, after the payment of such interest, any profits remain to be divided, he may also receive his portion of such profits.

R. S. M. c. 114, § 29.

**When liable to refund. 75.** If it appear that, by the payment of interest or profits to any special partner, the original capital has been reduced, the partner receiving the same shall be bound to restore the same, or so much thereof as shall be necessary to make good his share of the deficient capital, with interest.

R. S. M. c. 114, § 30.

**Privileges of special partners. 76.** A special partner may, from time to time, examine into the state and progress of the partnership concern, and may advise as to its management; but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise; and if he interfere contrary to these provisions, he shall be deemed a general partner.

R. S. M. c. 114, § 31.

**General partners liable to account. 77.** The general partners shall be liable to account, both at law and in equity, to each other and to the special partners for their management of the concern, in like manner as other partners are liable.

R. S. M. c. 114, § 32.

**Other creditors preferred to special partners. 78.** In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership have been satisfied.

R. S. M. c. 114, § 33.

**No premature dissolution without notice. 79.** No dissolution of such limited partnership by the acts of the parties shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution has been filed in the office in which the original certificate is recorded, and has been published, once in each week for three weeks, in a newspaper published in the municipality where the partnership has its principal place of business, or the nearest place thereto wherein a newspaper is published, and once in *The Manitoba Gazette*.

R. S. M. c. 114, § 34.

**Tariff of fees. 80.** The prothonotary, deputy clerks of the Crown and pleas, and registrars shall receive the following fees:

a) For filing and recording every declaration or certificate under this Act, one dollar . . . . .	\$ 1 00
b) For searching in respect of each firm or business in the "Firm Index Book" or the book for registering certificates of limited partnerships, twenty-five cents . . . . .	25
c) For searching in the "Individual Index Book," in respect of each name, twenty-five cents . . . . .	25
d) For each certificate when required, seventy-five cents . . . . .	75

R. S. M. c. 114, § 35.

**Fees payable to Crown. 81.** All fees levied by or payable to the prothonotary and the deputy clerks of the Crown and pleas under this Act shall be payable to the Crown, subject to the provisions of the *Law Fees Act*, and shall form part of the Consolidated Revenue Fund of the Province.

R. S. M. c. 114, § 36.



*Schedules.*

The following are the schedules referred to in this Act:

*Schedule A.**Firm Index Book.*

Style of firm.	Names and residences of persons composing the firm.	Date of filing declaration.

*Schedule B.**Individual Index Book.*

Name and residence of individual.	Style of firm of which a member.	Date of filing declaration.

**Companies.**

**a) R. S. M. 1902, c. 30. An Act respecting the Incorporation of Joint Stock Companies by Letters Patent and their Powers.<sup>1)</sup>**

*Short title.*

**Short title.** 1. This Act may be cited as *The Manitoba Joint Stock Companies Act*.

*Interpretation.*

The expressions "**The Manitoba Joint Stock Companies Act**" to include part C. S. M., cap. 9. 2. The expression *The Manitoba Joint Stock Companies Incorporation Act*, where used in this Act, shall mean and include that portion of the Act chaptered nine of the Consolidated Statutes, being Division numbered seven, and being composed of the sections numbered from two hundred and twenty-six to two hundred and eighty-four, both inclusive, and all amendments of said Division made before the coming into force of the Revised Statutes.

**Proofs may be by affidavit.** 3. Proof of any matter which may be necessary to be made hereunder may be by affidavit before any justice of the peace, who is hereby authorized and empowered to administer oaths for that purpose, or before any person authorized by *The Manitoba Evidence Act* to take affidavits for use in Manitoba, or otherwise as the Provincial Secretary or other officer shall think proper.

*Incorporation by letters patent.*

**Charter may be granted by Lieutenant-Governor-in-Council. Except for railways and insurance.** 4. The Lieutenant-Governor-in-Council may, by letters patent under the great seal of the Province, grant a charter to any number of persons, not less than five, who shall petition therefor, constituting such persons and others who may become shareholders in the company thereby created a body corporate and politic, for any purposes or objects to which the legislative authority of the Legislature of Manitoba extends, except the construction and working of railways and the business of insurance, and the business of a trust company or guarantee company.

**Petition for incorporation. Prevention of use of conflicting names. Objects; chief place of business; capital stock; number of shares; names and addresses of**

<sup>1)</sup> Incorporating the amendments made by the Acts, 1903, c. 7; 1904, c. 6; 1905, c. 4; 1905, c. 5; 1906, c. 13; 1906, c. 14; 1907, c. 7; 1908, c. 8; 1909, c. 9 1911, c. 8.

**applicants; amount of stock taken and paid; how paid. 5.** [As amended by Acts, 1903, c. 7, and 1906, c. 13.] The applicants for such letters patent shall petition the Lieutenant-Governor, through the Provincial Secretary, for the issue thereof, stating in their petition: a) The proposed corporate name of the company, which shall not be that of any other known company, incorporated or unincorporated, or any name liable to be unfairly confounded therewith, or otherwise on public grounds objectionable, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive; provided, however, that a subsisting company or partnership, or individual, or the person or persons carrying on such business under any name, may consent that such name, in whole or in part, be granted to the new company; b) The object or objects for which the incorporation is sought; c) The place within the Province of Manitoba which is to be its chief place of business; d) The amount of its capital stock; e) The number of shares and the amount of each share; f) The names in full, and the address and calling, of each of the applicants, with special mention of the names of not less than three, nor more than nine, of their number, who are to be first directors of the company; g) The amount of stock taken by each of such applicants, and also the amount, if any, paid in upon the stock of each applicant; h) Whether such amount is paid in cash or by transfer of property, or how otherwise.

As to acts held not *ultra vires* the company, see *Farmers and Traders Loan Co. v. Conklin*, (1884), 1 Man. 181; *Boyce v. McDonald*, (1893), 9 Man. 297. *Quære*, whether a company can be guilty of a malicious tort. — *Freeborn v. Singer Sewing Machine Co.*, (1885), 2 Man. 253; but see *Wilson v. City of Winnipeg*, (1887), 4 Man. 193.

#### *Joint stock companies.*

**Petition may ask to have embodied in letters patent any provision which might be embodied in by-law. 6.** [As amended by Acts, 1903, c. 7.] The petition may ask for the embodying in the letters patent of any provision which otherwise, under the provisions hereof, might be embodied in any by-law of the company when incorporated.

[7. Is repealed.]

**When petition not filed by all memorandum of association to be filed. 8.** In case the petition is not signed by all the shareholders whose names are proposed to be inserted in the letters patent, it shall be accompanied by a memorandum of association, signed by all the parties whose names are to be so inserted, or by their attorneys duly authorized in writing; and such memorandum shall contain the particulars required by the next preceding section.

**Applicants to establish that proposed name not the name of another company. Evidence to be taken and kept. 9.** Before the letters patent are issued, the applicants must establish to the satisfaction of the Provincial Secretary, or of such other officer as may be charged by the Lieutenant-Governor in Council to report thereon, the sufficiency of their petition, and show that the proposed name is not open to objection under section 5 of this Act, as amended. And to that end, the Provincial Secretary or such other officer may take and keep of record any requisite evidence in writing under oath or otherwise; and he or any justice of the peace or person authorized by *The Manitoba Evidence Act* to take affidavits for use in Manitoba may administer every requisite oath.

**When notice given of intention to apply for an Act of Parliament next session. 10.** Where a notice has been duly published according to the rules of the Legislative Assembly that an application will be made to the Legislature at its then next session for an Act incorporating any company, the incorporation whereof is sought for objects for which incorporation is authorized by the provisions hereof, and, in contemplation of its passing, a notice of an application under the foregoing provisions shall not be necessary; and the Lieutenant-Governor in Council, upon the report of the proper Minister or officer that proof has been furnished that the other requirements hereinbefore contained have been complied with, may grant a charter of incorporation to such company. In any application under this section the facts required to be stated in the petition may be verified in any manner that the Provincial Secretary, or other officer charged to report thereon, may deem sufficient, and in such case it shall not be requisite that the petition should be signed by all the shareholders to be named in the letters patent, or that the memorandum of association or other particulars should be in accordance with the requirements hereinbefore contained.



**Change of name. Variation of powers. 11.** The Lieutenant-Governor in Council may give to the company a corporate name wholly or partially different from the name proposed by the applicants in their petition, and may in the letters patent vary the powers of the company from the powers stated in the petition.

As to power of company to change name, see R. S. M. 1903, c. 27, *infra*. Misnomer of plaintiff company is not a ground for non-suit. The proper procedure is to compel the plaintiff to amend. — *Great Northwestern Telegraph Co. v. McLaren*, (1884), 1 Man. 358. See also *McRae v. Corbett*, (1890), 6 Man. 426. *Seemle*, "Limited" is not part of the name. — *Waterous Engine Works v. McLean*, (1885), 2 Man. 278.

[12. Is repealed.]

**Deposits on stock may be repaid to subscribers when letters patent are refused.**

**13.** [As amended by Acts, 1908, c. 8, § 4.] Where a payment on any subscribed stock, shall have been made pending the application for letters patent of incorporation, and where such application shall fail or be withdrawn, the said deposit, upon the certificate of the Provincial Secretary stating the failure or withdrawal of such application, may be repaid to the person through whom the said deposit was specially made.

**Companies existing may apply under this Act. 14.** Any company, for purposes or objects within the scope of the provisions herein contained, heretofore incorporated, whether under a special or general Act, and now being a subsisting and valid corporation, may apply for letters patent under the foregoing provisions; and the Lieutenant-Governor in Council, upon proof that notice of the application has been inserted for four weeks in *The Manitoba Gazette*, may direct the issue of letters patent incorporating the shareholders of the said company as a company under the foregoing provisions, and thereupon all the rights and obligations of the former company shall be transferred to the new company, and all proceedings may be continued or commenced by or against the new company, that might have been continued or commenced by or against the old company; and it shall not be necessary in any such letters patent to set out the names of the shareholders; and after the issue of the letters patent the company shall be governed in all respects by the provisions hereof, except that the liability of the shareholders to creditors of the old company shall remain as at the time of the issue of the letters patent.

**Letters patent to recite all material averments of notice and petition. 15.** The letters patent shall recite all the material averments of the notice and petition, as established under the preceding sections of the Act.

**Restrictions in letters patent. 16.** The Lieutenant-Governor in Council may restrict such letters patent of incorporation in any manner which may seem desirable.

**Provisions preliminary to issue of letters patent to be directory. 17.** The provisions of this Act relating to matters preliminary to the issue of the letters patent shall be deemed directory only; and no letters patent issued or which have heretofore been issued under *The Manitoba Joint Stock Companies Incorporation Act*, or under this Act or any other Act or Acts for which this Act is substituted, shall be held void or voidable on account of any irregularity in any prescribed notice, or on account of the insufficiency of any such notice, or on account of any irregularity in respect of any other matter preliminary to the issue of such letters patent.

**Notice of issue of letters patent to be published. 18.** Notice of the granting of the letters patent shall, at the expense of the applicants, be forthwith given by the Provincial Secretary in *The Manitoba Gazette* in the form in Schedule A to this Act, and from the date of the issue of the letters patent the persons named therein and their successors shall be a body corporate and politic by the name mentioned therein.

**All powers subject to restrictions and provisions of this Act. 19.** All powers given to the company by the letters patent granted in its behalf shall be exercised subject to the provisions and restrictions herein contained.

**Lieutenant-Governor in Council may change name of company; not to affect rights and obligations of company. Constitution of proceedings. 20.** In case it should be made to appear that any company is incorporated under the same name as, or under a name similar to that of, an existing company, it shall be lawful for the Lieutenant-Governor in Council to direct the issue of supplementary letters patent reciting the former letters and changing the name of the company to some other name to be set forth in the supplementary letters patent; and no such alteration of the name shall affect the rights or obligations of the company; and all proceedings may be continued and commenced by or against the company by its new name,

that might have been continued or commenced by or against the company by its former name; and the Court of King's Bench may compel an application under this section whenever a company improperly assumes the name of, or a name similar to that of, an existing company.

**Supplementary letters patent. 21.** [As amended by Acts, 1904, c. 6, § 1; 1907, c. 8, § 2.] In case a resolution, authorizing an application to the Lieutenant-Governor therefor, is passed by a vote of not less than two-thirds in value of the shareholders, present in person or by proxy at a general meeting of the company, duly called for considering the subject of such resolution, the Lieutenant-Governor-in-Council may, upon proof that notice of the application has been published by one insertion in *The Manitoba Gazette* one month before the application is made, from time to time direct the issue of supplementary letters patent to the company, embracing any or all of the following matters: a) Extending the powers of the company to any objects, within the scope of this Act, which the company may desire; b) Limiting or increasing the amount which the company may borrow upon debentures or otherwise; c) Providing for the formation of a reserve fund; d) Varying any provision contained in the letters patent, so long as the alteration desired is not contrary to the provisions of this Act; e) Making provision for any other matter or thing in respect of which provision might have been made by the original letters patent. Notwithstanding anything herein contained the Lieutenant-Governor-in-Council may, upon petition, but without requiring such resolution and advertisement in *The Gazette*, direct the issue of supplementary letters patent to the company, varying or striking out any provision contained in the letters patent when, in the opinion of the Lieutenant-Governor-in-Council, such variation or striking out is merely for the purpose of remedying some clerical error or defect or provision of a formal or unimportant nature in such letters patent.

**Before commencing business 10 per cent. to be subscribed, etc. 22.** No company incorporated under *The Manitoba Joint Stock Companies Incorporation Act*, or under this Act or any other Act or Acts for which this Act is substituted, shall commence business until at least ten per cent. of the capital stock of the said company shall have been subscribed, and at least ten per cent. of the amount of stock so subscribed actually paid up.

**Forfeiture of charter for non-user. 23.** The charter of the company shall be forfeited by non-user during three consecutive years at any one time, or if the company do not go into actual operation within three years after it is granted; and no declaration of such forfeiture by any Act of the Legislature shall be deemed an infringement of such charter.

**Future legislation. 24.** The company shall be subject to such further and other provisions; as the Legislature of Manitoba may hereafter deem expedient, in order to secure the due management of its affairs and the protection of its shareholders and creditors.

#### *Directors.*

**Number. 25.** The affairs of every such company shall be managed by a board of not less than three nor more than nine directors.

**First directors. 26.** The persons named as such in the letters patent shall be the directors of the company, until replaced by others duly appointed in their stead.

**Directors to be shareholders. 27.** No person shall be elected or appointed a director, unless he is a shareholder owning stock absolutely in his own right, and not in arrear in respect of any calls thereon.

**Penalty for allowing use of name for consideration. Person guilty of violation of subsection (1) not to retain shares or other benefit. Suit to recover or forfeit same. 27 A.** [Added by Acts, 1907, c. 14, § 1.] 1. No person shall accept an allotment or receive a transfer of any shares in the stock of any company or corporation incorporated under this Act, or under any statute of this Province, or accept or receive any other benefit or advantage from any such company or corporation, or from any person connected with it, in consideration of allowing the use of his name as a director, trustee, or member of the board of management of any such company or corporation, under a penalty of not less than one hundred dollars and not more than two thousand dollars, to be recovered on summary conviction before a police magistrate or two justice of the peace. 2. No person guilty of any violation of subsection (1) hereof shall be entitled to retain or hold any shares or stock, or other



benefit or advantage, allotted, or transferred to, or received by him for any such consideration as aforesaid, and all such shares or other benefit or advantage, whether in the hands of such person or of any person acquiring the same with notice or knowledge that the transferor or assignor had been guilty of any such violation, shall be illegal and of no value, and shall not confer any benefit to the person receiving the same, and may, at the suit of the company or corporation or of any shareholder thereof, be declared by any Court of competent jurisdiction to be absolutely forfeited to the company or corporation, and any such Court may order that the same be restored or retransferred or the value thereof paid to the company or corporation, together with costs of any such suit.

**Directors to be elected. Term of office. 28.** The directors of the company shall be elected by the shareholders in general meeting of the company assembled at some place within the Province, at such times, in such wise, and for such terms, not exceeding two years, as the letters patent or, in default thereof, the by-laws of the company may prescribe.

**Mode of election, in default of express provisions. Yearly. Thirty days' notice. Voting. By ballot. Vacancies, how filled. Officers. 29.** In default of other express provisions in such behalf by letters patent or by by-laws of the company: a) Such election shall take place yearly, all the members of the board retiring and, if otherwise qualified, being eligible for re-election; b) Notice of the time and place for holding general meetings of the company shall be given at least thirty days previously thereto, in some newspaper published at, or as near as may be to, the office or chief place of business of the company, and also, in the case of companies having a capital exceeding five thousand dollars, in *The Manitoba Gazette*; c) At all the general meetings of the company every shareholder shall be entitled to as many votes as he owns shares in the company, and may vote by proxy; d) Elections of directors shall be by ballot; e) Vacancies occurring in the board of directors may unless the by-laws otherwise direct, be filled by the board for the unexpired remainder of the term, from among the qualified shareholders of the company; f) The directors shall, from time to time, elect from among themselves a president of the company; and shall also appoint and may remove at pleasure all other officers thereof.

**Failure to elect directors, how remedied. 30.** If at any time an election of directors be not made or do not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the company duly called for that purpose; and the retiring directors shall continue in office until their successors are elected. ‡

**Powers and duties of directors. By-laws. Confirmation of by-laws. Special general meetings. Disposal of stock. Payment to president or director. 31.** The directors of the company shall have full power in all things to administer the affairs of the company; and may make or cause to be made for the company any description of contract which the company may, by law, enter into; and may, from time to time, make by-laws, not contrary to law nor to the letters patent of the company, to regulate the allotment of stock, the making of calls thereon, the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, the transfer of stock, the declaration and payment of dividends, the number of the directors, their term of service, the amount of their stock qualification, the appointment, functions, duties, and removal of all agents, officers, and servants of the company, the security to be given by them to the company, their remuneration, the time at which and place where the annual meetings of the company shall be held, the calling of meetings, regular and special, of the board of directors and of the company, the quorum, the requirements as to proxies, and the procedure in all things at such meetings, the imposition and recovery of all penalties and forfeitures admitting of regulation by by-law, and the conduct in all other particulars of the affairs of the company, and may, from time to time, repeal, amend, or re-enact the same; but every such by-law, and every repeal, amendment, or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company duly called for that purpose, shall only have force until the next annual meeting of the company; and in default of confirmation thereat, shall, at and from that time only, cease to have force, and in that case no new by-law to the same or like effect shall have any force until confirmed at a general meeting of the company: a) Provided, always, that one-fourth part in value of the shareholders of the company shall at all times have

the right to call a special meeting thereof for the transaction of any business specified in such written requisition and notice as they may issue to that effect; b) Provided, also, that no by-law for the allotment or sale of stock at any greater discount, or at any less premium, than what had been previously authorized at a general meeting, or for the payment of the president or any director, shall be valid or acted upon, until the same has been confirmed at an annual meeting or a special general meeting; c) [Added by Acts, 1911, c. 8, § 3.] Each director shall have power to nominate any other director, or any person approved for that purpose by the other directors of the company, to act as alternate director in his place for any period or successive periods, not exceeding six calendar months each, and at his discretion to remove such alternate director, and on such appointment being made the alternate director shall be subject in all respects to the terms and conditions subsisting with reference to the other directors of the company, and the director so nominating shall not be responsible for the acts and defaults of the alternate director so nominated.

Directors have no power to allot shares at a rate below the par value, and a by-law to that effect is invalid. — *Northwestern Electric Co. v. Walsh*, (1898), 29 S. C. R. 33, reversing s. c. 11 Man. 629.

**Liability of directors declaring a dividend when company is insolvent, etc. How a director may avoid liability. 32.** The directors of the company shall not declare or pay any dividend when the company is insolvent, or any dividend the payment of which renders the company insolvent or diminishes the capital stock thereof; but if any director present when such dividend is declared do forthwith, or if any director then absent do within twenty-four hours after he shall become aware thereof and able so to do, enter in the minutes of the board of directors his protest against the same, and within eight days thereafter publish the same in at least one newspaper published at, or as near as may be possible to, the office or chief place of business of the company, such director may thereby, and not otherwise, exonerate himself from liability.

**Liability of directors for wages. 33.** The directors of the company shall be jointly and severally liable to the laborers, servants, and apprentices thereof, excluding the officers of the company, for all debt not exceeding one year's wages due for services performed for the company whilst they are such directors respectively; but no director shall be liable in an action therefor, unless the company has been sued therefor within one year after the debt became due, nor yet unless such director is sued therefor within one year from the time when he ceased to be such director, nor yet before an execution against the company has been returned unsatisfied in whole or in part; and the amount due on such execution shall be the amount recoverable with costs against the directors.

Directors can not escape liability under this section by showing that they hold shares in the company in trust in violation of section 27 of the Act. The provisions of this section are remedial and not penal in their nature. The statute merely withholds from the directors in respect of wages the freedom from personal liability for the debts of the company. — *McDonald v. Drake*, (1907), 16 Man. 220.

#### *Capital Stock. Shares.*

**Allotment of stock. 34.** If the letters patent make no other definite provision, the stock of the company, so far as it is not allotted thereby, shall be allotted when and as the directors by by-law or otherwise may ordain.

An agreement to take shares in a company, although accompanied by the giving of a promissory note in part payment is merely an application for the shares and is not binding on the applicant until accepted by the company. — *Kruger v. Harwood*, (1907), 16 Man. 433. See note to § 31, *supra*.

**Directors may make by-laws to subdivide shares. 35.** The directors of the company, if they see fit any at time, may make a by-law subdividing the existing shares into shares of a smaller amount.

**Also to increase capital stock. 36.** The directors of the company, if they see fit, at any time after the whole capital stock of the company shall have been taken up and thirty per centum thereon paid in, but not sooner, may make a by-law for increasing the capital stock of the company to any amount which they may consider requisite to the due carrying out of the objects of the company.

**What such by-law shall provide. 37.** Such by-law shall declare the number and value of the shares of the new stock, and may prescribe the manner in which



the same shall be allotted; and, in default of its so doing, the control of such allotment shall be held to vest absolutely in the directors.

**And to decrease capital stock. 38.** The directors of the company, if they see fit at any time, may make a by-law for decreasing the capital stock of the company to any amount which they may consider sufficient in order to the due carrying out of the undertaking of the company, and advisable; but such by-law shall declare the number and value of the shares so decreased and the allotment thereof, or the rule or rules by which the same shall be made.

**Shareholders to sanction increase or decrease of capital stock or subdivision of shares by two-thirds the value vote. 39.** But no by-law for increasing or decreasing the capital stock of the company, or subdividing the shares, shall have any force or effect whatever, until it shall have been sanctioned by a vote of not less than two-thirds in value of the shareholders then present or represented by proxy at a general meeting of the company duly called to consider the same, and afterwards confirmed by supplementary letters patent.

**Liability of shareholders to creditors at time of reduction. 40.** The liability of the shareholders to persons who were, at the time of the reduction of the capital, creditors of the company, shall remain as though the capital had not been decreased.

**Directors may petition Lieutenant-Governor for supplementary letters patent. What petition must show. Evidence to be taken. 41.** At any time, not more than six months after such sanction of such by-law, the directors may petition the Lieutenant-Governor, through the Provincial Secretary, for the issue of supplementary letters patent to confirm the same: a) With such petition they must produce such by-law and establish to the satisfaction of the Provincial Secretary, or of such other officer as may be charged by order of the Lieutenant-Governor in Council to report thereon, the due passing and sanction of such by-law, and, if the petition is in respect of increase or decrease of capital, the bona fide character of the increase or decrease of the capital thereby provided for, and that notice of the application for supplementary letters patent has been inserted for one month in *The Manitoba Gazette*; b) And to that end the Provincial Secretary or such other officer may take and keep of record any requisite evidence in writing.

A company has power to make a by-law provided that a lien shall exist upon the shares of any shareholder for any debt or liability to the company. — *Montgomery v. Mitchell*, (1908), 18 Man. 37.

**Lieutenant-Governor on proof may grant supplementary letters patent. Notice to be given by Provincial Secretary in Gazette. 42.** Upon the due proof of the same being so made, the Lieutenant-Governor-in-Council may grant such supplementary letters patent under the great seal of the Province, and notice thereof shall forthwith be given by the Provincial Secretary in *The Manitoba Gazette* in the form in Schedule B to this Act, and thereupon, from the date of the supplementary letters patent, the shares shall be subdivided or the capital stock of the company shall be and remain increased or decreased, as the case may be, to the amount, in the manner and subject to the conditions set forth by such by-law; and the whole of the stock, as so increased or decreased, shall become subject to the provisions hereof in like manner, so far as may be, as though every part thereof had formed part of the stock of the company originally subscribed.

**By-law creating preferential stock. Holders of such stock may be empowered to elect certain directors. Requirements for sanction of by-law creating preference shares. Position of holders of such stock. Proviso as to rights of creditors. 43.** [As amended by Acts, 1908, c. 8, § 2.] The directors of any company incorporated under this Act, or any other general Act of this Province for the incorporation of companies by letters patent, may make a by-law for creating and issuing any part of the capital stock as preference stock, giving the same such preference and priority, as respects dividends and otherwise, over ordinary stock, as may be declared by the by-law. a) The by-law may provide that the holders of such preference shares shall have the right to select a certain stated proportion of the board of directors, or may give them such other control over the affairs of the company as may be considered expedient; b) No such by-law shall have any force or effect whatever until after it has been sanctioned by a vote of shareholders representing not less than two-thirds of the par value of the subscribed capital stock, present in person or by proxy at a general meeting of the company duly called for considering the same: c) Holders of such preference stock

shall be shareholders within the meaning of this Act, and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of this Act, provided, however, that in respect of dividends and otherwise they shall, as against the original or ordinary shareholders, be entitled to the preference given by any by-law as aforesaid; d) Nothing in this section shall affect or impair the rights of creditors of any company; e) The directors of a company which has heretofore issued, or may hereafter issue, preference stock may, for the purposes of cancelling such preference stock or parts thereof from time to time, pass by-laws providing for the purchase or acquisition by the company of such stock, or parts thereof, with the consent of the holders, and for the cancellation of the stock so purchased or acquired and for the reduction pro rata according to the amount of stock so cancelled of any reserve set apart, or required to be set apart, in respect of such preference stock, but no such by-law shall be valid or acted upon unless and until the same has been sanctioned by a vote of at least two-thirds in value of the shareholders of the company present in person, or represented by proxy, at a special meeting duly called for considering the same, and unless and until such by-law has been confirmed by supplementary letters patent; f) At any time, not more than three months after the sanction of such by-law by the shareholders as aforesaid, the company may petition the Lieutenant-Governor-in-Council, through the Provincial Secretary, for the issue of supplementary letters patent to confirm the same; with the petition the company shall produce the by-law and establish to the satisfaction of the Provincial Secretary, or of such other officer as may be charged by him to report thereon, the due passage and sanction of the by-law and the bona fide character of the same, and thereupon the Lieutenant-Governor-in-Council may, by supplementary letters patent, confirm the by-law, and may, with the consent of the board of directors of the company, by the supplementary letters patent, add such terms and conditions thereto as to him may seem proper, and thereupon from the date of the supplementary letters patent the by-law, with such added terms and conditions, if any, shall be valid and may be acted upon; notice of the issue of supplementary letters patent shall be given by the Provincial Secretary in *The Manitoba Gazette*.

**Stock personal estate. 44.** The stock of the company shall be deemed personal estate, and shall be transferable in such manner only, and subject to all such conditions and restrictions, as herein, or in the letters patent, or in the by-laws of the company, are contained.

**Company not to be liable in respect of trusts. 45.** The company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, in respect of any share; and the receipt of the shareholder in whose name the same may stand in the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, and whether or not notice of such trust has been given to the company; and the company shall not be bound to see to the application of the money paid upon such receipt.

#### *Liability of shareholders.*

**Liability of shareholders. Law of set-off applies. 46.** Each shareholder, until the whole amount of his stock has been paid up, shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon, but shall not be liable in an action therefor by any creditor before an execution against the company has been returned unsatisfied in whole or in part, and the amount due on such execution shall, subject to the provisions of the next succeeding section, be the amount recoverable, with costs, against such shareholders: Provided that any shareholder may plead by way of defence, in whole or in part, any set-off which he could set up against the company, except a claim for unpaid dividends, or a salary or allowance as a president or director.

**Limited to amount of stock. 47.** The shareholders of the company shall not, as such, be held responsible for any act, default, or liability whatsoever of the company, or for any engagement, claim, payment, loss, injury, transaction, matter, or thing whatsoever, relating to or connected with the company, beyond the unpaid amount of their respective shares in the capital stock thereof.

**Trustees or mortgagees not personally liable. 48.** No person holding stock in the company as an executor, administrator, tutor, curator, guardian, or trustee shall be personally subject to liability as a shareholder; but the estate and funds



in the hands of such person shall be liable in like manner, and to the same extent as the testator or intestate, or the minor, ward, or other interested person in such trust fund, would be, if competent to act and holding such stock in his own name; and no person holding such stock as collateral security shall be personally subject to such liability, but the person pledging such stock shall be considered as holding the same and shall be liable as a shareholder accordingly.

**Trustees may vote.** 49. Every such executor, administrator, tutor, curator, guardian, or trustee shall represent the stock in his hands at all meetings of the company, and may vote accordingly as a shareholder; and every person who pledges his stock may nevertheless, represent the same at all such meetings, and may vote accordingly as a shareholder.

**Actions between company and shareholders.** 50. Any description of action may be prosecuted and maintained between the company and any shareholder thereof.

#### *Calls.*

**Calling in instalments.** 51. The directors of the company may call in and demand from the shareholders thereof, respectively, all sums of money by them subscribed, at such times and places, and in such payments or instalments, as the letters patent, or the provisions hereof, or the by-laws of the company, may require or allow, and interest shall accrue and fall due at the rate of six per centum per annum, upon the amount of any unpaid call, from the day appointed for the payment of such call.

**Ten per cent. within first year.** 52. Not less than ten per centum upon the allotted stock of the company shall, by means of one or more calls, be called in and made payable within one year from the incorporation of the company; the residue, when and as the by-laws of the company shall direct.

**Enforcement of payment of calls by action.** 53. The company may enforce payment of all calls and interest thereon by action in any competent Court; and in such action it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, in respect of one call or more upon one share or more, stating the number of calls and the amount of each, whereby an action hath accrued to the company; and a certificate under its seal, and purporting to be signed by any officer of the company, to the effect that the defendant is a shareholder, that such call or calls has or have been made, and that so much is due by him and unpaid thereon, shall be received in all Courts as prima facie evidence to that effect.

**Forfeiture of shares.** 54. If, after such demand or notice as by the letters patent or by-laws of the company may be prescribed, any call made upon any share or shares be not paid within such time as by such letters patent or by-laws may be limited in that behalf, the directors in their discretion, by vote to that effect reciting the facts, the same being duly recorded in their minutes, may summarily forfeit any share or shares whereupon such payment is not made; and the same shall thereupon become the property of the company and may be disposed of as<sup>1)</sup> by-laws or otherwise the directors shall ordain.

**Restrictions as to transactions.** 55. No share or shares shall be transferable until all previous calls thereon have been fully paid in, or until declared forfeited for non-payment of calls thereon.

**Shareholders in arrears not to vote.** 56. No shareholder, being in arrear in respect of any calls, shall be entitled to vote at any meeting of the company.

#### *Stock books.*

**Books to be kept and what to contain.** Copy of letters patent. Names of shareholders. Their addresses. Number of shares. Amount paid. All transfers in order. Names of all directors. 57. The company shall cause a book or books to be kept by the secretary, or by some other officer especially charged with that duty, wherein shall be kept recorded: a) A copy of the letters patent incorporating the company, and of any supplementary letters patent for increasing or decreasing the capital stock thereof, and of all by-laws thereof; b) The names, alphabetically arranged, of all persons who are or have been shareholders; c) The address and calling of

<sup>1)</sup> *Sic*; obviously "by" should be inserted.

every such person while such shareholder; d) The number of shares of stock held by each shareholder; e) The amount paid in and remaining unpaid, respectively, on the stock of each shareholder; f) All transfers of stock in their order as presented to the company for entry, with the date and other particulars of each transfer, and the date of the entry thereof; and g) The names, addresses, and calling of all persons who are or have been directors of the company, with the several dates at which each ever became, or ceased to be, such director,

**Refusal to enter transfer if calls not paid. 58.** The directors may refuse to allow the entry into any such book of any transfer of stock whereon any call has been made which has not been paid in.

**Transfer valid only after entry. 59.** No transfer of stock, unless made by sale under execution, shall be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and as rendering the transferee liable *ad interim* jointly and severally with the transferor, to the company and its creditors, until the entry thereof has been duly made in such book or books.

**Books to be open for inspection. 60.** Such books shall, during reasonable business hours every day except holidays, be kept open for the inspection of shareholders and creditors of the company and their personal representatives at the office or chief place of business of the company; and every such shareholder, creditor, or representative may make extracts therefrom.

**Books to be prima facie evidence. 61.** Such books shall be prima facie evidence of all facts purporting to be thereby stated in any suit or proceeding against the company or against any shareholder.

**Penalty for false entries. 62.** No director, officer, or servant of the company shall knowingly make, or assist in making, any untrue entry in any such book, or shall refuse or neglect to make any proper entry therein; and any persons violating the provisions of this section shall, besides being punished criminally, be liable in damages for all loss or injury which any person interested may sustain thereby.

**Liability for refusal to allow inspection of books. 63.** Any director or officer refusing to permit any person entitled thereto to inspect such book or books, or make extracts therefrom, shall forfeit and pay to the party aggrieved the sum of one hundred dollars; and in case the amount be not paid within seven days after the recovery of a judgment, the Court in which a judgment is recovered, or a judge thereof, may direct the imprisonment of the offender for any period not exceeding three months, unless the amount with costs be sooner paid.

#### *Contracts.*

**Contracts, when to be binding on company. Proviso as to notes, banking, and insurance. 64.** Every contract, agreement, engagement, or bargain made, and every bill of exchange drawn, accepted, or indorsed, and every promissory note and cheque made, drawn, or indorsed, on behalf of the company by any agent, officer, or servant of the company, in general accordance with his powers as such agent, officer, or servant under the by-laws of the company or otherwise, shall be binding upon the company; and in no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note, or cheque, or to prove that the same was made, drawn, accepted, or indorsed, as the case may be, in pursuance of any by-law or special vote or order; nor shall the party so acting as agent, officer, or servant of the company be thereby subjected individually to any liability whatsoever to any third party therefor: Provided, always, that nothing herein contained shall be construed to authorize the company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money or as the note of a bank, or to engage in the business of banking or insurance as aforesaid.

Seal not necessary: *Murdoch v. Manitoba, etc., Railway Co.*, (1881), Temp. Wood, 334; *Armstrong v. Portage, etc., Railway Co.*, (1884), 1 Man. 344; *Gordon v. Toronto, etc., Land Co.*, (1885), 2 Man. 318; *McEdwards v. Ogilvie Milling Co.*, (1886), 4 Man. 1. See also, on this point: *Belch v. Manitoba & Northwestern Railway Co.*, (1887), 4 Man. 198; *Bernadine v. North Dufferin*, (1891), 19 S. C. R. 581, reversing s. c. 6 Man. 88; distinguished in *Macarthur v. Portage la Prairie*, (1893), 9 Man. 588; *Forrest v. Great Northwestern Central Railway Co.*, (1899), 12 Man. 472. A trading company is bound on a promissory note executed by the managing director in the course of the company's business. — *Imperial Bank v. Farmer's Trading Co.*, (1901), 13 Man. 412.



*Powers with reference to real estate and otherwise.*

**Company may acquire, hold and transfer real estate. Provision in case of land company. 65.** [As amended by Acts, 1911, c. 8, § 1.] Every company so incorporated, subject to the limitations contained in its letters patent of incorporation, may acquire, hold, alienate, and convey real estate requisite for the carrying on of the undertaking of such company, and in case of a company incorporated for the purpose of the buying and selling of land (hereinafter called a land company) in addition to any real estate requisite for the business of the company, and shall forthwith become and be invested with all rights, real and personal, heretofore held by or for the company under a trust created with a view to its incorporation, and with all the powers, privileges, and immunities requisite to the carrying on of its undertaking, as though the company had been incorporated by a special Act of the Legislature making the company a body politic and corporate and embodying all the provisions herein contained and of the letters patent. Every such land company may mortgage or convey or make an agreement of sale of land without the assent of the shareholders, and it shall be sufficient if each such conveyance, mortgage, or agreement be specially authorized by a by-law passed by the board of directors. This provision shall be retroactive and shall apply to all such transactions heretofore entered into by any such land company.

**Company may take security on or acquire lands as security for pre-existing debts. 66.** Subject to the limitations contained in its letters patent of incorporation, any such company heretofore or hereafter incorporated shall be capable of taking, holding, and acquiring all such lands and tenements, real and personal estate, as may or shall have been bona fide mortgaged to such company by way of security for, or conveyed to it in satisfaction of, debts previously contracted in the course of its business, or purchased at judicial sales upon levy for such indebtedness, or otherwise purchased for the purpose of avoiding a loss to the company in respect thereof, or of the owner thereof.

**Letters of incorporation may be revoked. 67.** The Lieutenant-Governor-in-Council may, at any time, revoke any letters patent of incorporation granted under *The Manitoba Joint Stock Companies Incorporation Act*, or under this Act or any other Act or Acts for which this Act is substituted, on account of the violation, by any such company, of any of the provisions hereinafter contained respecting the annual summary to be verified, deposited, and posted up, in so far as it is required to show the number of acres of land held by the company, and when they were purchased. Any such letters patent of incorporation so revoked shall be null and void as to any matter concerning subsequent to such revocation.

*Stock in other companies.*

**Not to purchase stocks in other corporations. 68.** No company shall use any of its funds in the purchase of stock in any other corporation, unless expressly authorized by a by-law confirmed at a general meeting.

*Borrowing money; debentures; mortgages of company's property.*

**Powers of directors. 69.** [As amended by Acts, 1911, c. 8, § 2.] The directors of a company may make by-laws: a) For borrowing money; b) For issuing bonds, debentures, or other securities; c) For pledging or selling such bonds, debentures, or securities for such sum and at such prices as may be deemed expedient or be necessary; d) For charging, hypothecating, mortgaging, or pledging any or all of the real or personal property, rights and powers, undertaking, franchises, including book debts and unpaid calls, of the company to secure any bonds, debentures, or other securities or any liability of the company provided that a duplicate original of such charge, mortgage, or other instrument of hypothecation or pledge, made to secure bonds, debentures, or other securities of a like nature, shall be forthwith filed in the office of the Provincial Secretary; e) For creating and issuing any part of the capital as preference shares; f) For creating and issuing debenture stock; g) For the conversion of preference shares into common shares or debentures or debenture stock, debentures into debenture stock or preference shares, or any class of shares or securities into any other class. Provided, however, that nothing in this part of this Act shall apply to promissory notes, bills of exchange, bills of lading, warehouse receipts, or other securities of a commercial nature issued in the ordinary course of business.

**Same subject. 69a.** [Added by Acts, 1911, c. 8, § 2.] No by-law referred to in the last preceding section shall take effect until it has been confirmed by a vote of not less than two-thirds in value of the shareholders present in person or represented by proxy at a general meeting of the company, duly called for considering the same by notice specifying the terms of the by-law to be confirmed.

**Certain statements of affairs to be made yearly. To show names of shareholders, etc. 70.** Every company incorporated under the provisions hereof, or under the provisions of *The Manitoba Joint Stock Companies Incorporation Act*, or of any other Act or Acts for which this Act is substituted, shall, on or before the first day of February in every year, make a list in duplicate, verified as is hereinafter required, of all persons who on the thirty-first day of December previously were shareholders of the company, and such list shall state the names, alphabetically arranged, and the addresses and calling of such persons, the amounts of stock held by them and the amounts unpaid thereon; and shall also make out a summary, verified as hereinafter required, of the state of the affairs of the company on the thirty-first day of December preceding, which shall contain the following particulars: a) The names, residences, and post office addresses of the directors, the secretary, and the treasurer of the company; b) The amount of the capital of the company, and the number of shares into which it is divided; c) The number of shares taken from the commencement of the company up to the thirty-first day of December preceding the summary; d) The amount of stock, if any, issued free from call; if none is so issued, this fact to be stated; e) The amount issued subject to call; f) The amount of calls made on each share; g) The total amount of calls received; h) The total amount of calls unpaid; i) The total amount of shares forfeited; j) The total amount of shares which have never been allotted or taken up; k) The total amount for which shareholders of the company are liable in respect of unpaid stock held by them, respectively.

**Land companies to show number of acres held. 71.** If the company be a land company, the said summary shall also show the number of acres of land held by the company and when purchased.

**Additional information may be given. 72.** The said summary may also, after giving the information hereinbefore required, give in a concise form such further information respecting the affairs of the company as the directors may consider expedient.

**Mode of writing the same. 73.** The said list and summary, and every duplicate thereof required by the provisions hereof, shall be written or printed on only one side of the sheet or sheets of paper containing the same.

**Verification thereof. 74.** The said list and summary shall be verified by the affidavit of the president and secretary, and if there be no such officers, or they or either of them are or is at the proper time out of the Province or otherwise unable to make the same, by the affidavit of the president or secretary and one of the directors, or two of the directors, as the case may require; and if the president or secretary do not make or join in the affidavit, the reason thereof shall be stated in the substituted affidavit.

**Posting thereof. Deposit in Department of Provincial Secretary. 75.** One of the duplicate lists and summaries, with the affidavit of verification, shall be posted in the head office of the company in Manitoba on or before the second day of February; and the company shall keep the same so posted until another list and summary shall be posted under the provisions thereof; and the other duplicate list and summary, with the affidavit of verification, shall be deposited in the Department of the Provincial Secretary on or before the eighth day of February next after the time hereinbefore fixed for the making of the same. a) [Added by Acts, 1911, c. 8, § 4.] Every company whose capital stock does not exceed one hundred thousand dollars shall pay a fee of one dollar to the Provincial Secretary upon the filing of such list and summary, and every other company shall pay a fee of two dollars to the Provincial Secretary upon such filing.

**Penalty for default. Cancelling letters patent for failure to make returns. 76.** [As amended by Acts, 1906, c. 13, § 3.] If any company makes default in complying with the provisions of the foregoing sections of this Act numbered from seventy to seventy-five, both inclusive, such company shall incur a penalty of twenty dollars every day during which default continues; and every director, manager, or secretary who shall knowingly and wilfully authorize or permit such default shall incur the like penalty. And if any company make such default for two successive years the



Lieutenant-Governor-in-Council may revoke and cancel the letters patent of incorporation of the company, but any such revocation or cancellation shall not affect the liability of the company, or its shareholders, for any debts or liabilities of the company.

*Evidence of by-laws.*

**How by-laws proved. 77.** A copy of any by-law of the company, under its seal, and purporting to be signed by any officer of the company, shall be received as prima facie evidence of such by-law in all Courts of Manitoba.

**Fees on letters patent, etc., to be fixed by order in council. 78.** The Lieutenant-Governor-in-Council may, from time to time, establish, alter, and regulate the tariff of the fees to be paid on application for letters patent and supplementary letters patent under the provisions hereof, and he may designate the Department or Departments through which the issue thereof shall take place, and may prescribe the forms of proceeding and record in respect thereof and all matters requisite for carrying out the objects of the provisions herein contained; and such fees may be made to vary in amount, under any rule or rules, as to the nature of the company, amount of capital or otherwise, as may be deemed expedient; and no steps shall be taken in any Department towards the issue of any letters patent or supplementary letters patent, under the provisions hereof, until the amount of all fees thereof shall have been duly paid.

**Fee for change of name. 79.** Whenever any change of name is made under the eleventh section of this Act, the applicants shall pay the sum of five dollars in addition to the fee payable under the order in council on the issue of such letters patent.

*Mining companies.*

[80—81. Relate to mining companies.]

*Surrender of charter.*

**Surrender and cancellation of charter. On what condition. Notice to be published. Order of Lieutenant-Governor-in-Council. 82.** [As amended by Acts, 1906, c. 14, § 2.] The charter of any company incorporated by letters patent under any statute of the Province may be surrendered and cancelled on the application of the company, if the company proves to the satisfaction of the Lieutenant-Governor-in-Council: a) That it has no debts existing or other rights in question; or b) That it has parted with its property, divided its assets rateably amongst its shareholders, and has no debts or liabilities; or c) That the debts and obligations of the company have been duly provided for or protected, or that the creditors of the company or other persons holding them consent; and that the company has given notice of the application for acceptance of surrender in one issue of *The Manitoba Gazette* and in a local newspaper, published at or near the place where the head office of the company is located, and at least one month prior to such application; and the Lieutenant-Governor-in-Council, upon due compliance with the provisions of this section, may accept such surrender and direct the cancellation of the charter, and may, by his order, fix a date upon and from which the company shall be deemed to be dissolved, and the company shall thereby and thereupon become dissolved accordingly.

**Issue of shares at a premium or discount. 82. A.<sup>1</sup>)** [Added by Acts, 1904, c. 6, § 3, as amended by Acts, 1908, c. 8, § 1.] Every company heretofore or hereafter incorporated by letters patent, under the said Act, may from time to time dispose of shares and stock, at such times, to such persons and on such terms and conditions, and at such premium or discount, or in such manner as the directors think advantageous to the company, after having received the sanction of two-thirds in value of the shareholders at a special or general meeting. Such action of the shareholders and directors shall be by by-law. At least twenty days' notice shall be given to each shareholder of the by-law proposed to be submitted at such special or general meeting. The said by-law shall not come into effect until after a certified copy of the same has been filed with the Provincial Secretary and notice thereof given in *The Manitoba Gazette*.

<sup>1</sup>) Arbitrary section number.

*Schedules.**Schedule A.**Notice of issue of letters patent.*

Public notice is hereby given that, under the statute in that behalf, letters patent have been issued under the great seal of the Province of Manitoba, bearing date the day of incorporating (here state the name, address, and calling of each corporator named in the letters patent), under the corporate name of (stating the name of the company as given in the letters patent, and where the name has been changed under the eleventh section, adding the words instead of as sought by the petition of incorporation, inserting the name), for the purpose of (here state the undertaking of the company as set forth in the letters patent), with a total capital stock of dollars, divided into shares of each.

Dated at the office of the Provincial Secretary of Manitoba, this  
 , A.D. 19 .

day of

A.B.,  
 Provincial Secretary.

*Schedule B.**Notice of issuing supplementary letters patent.*

Public notice is hereby given that, under the statute in that behalf, supplementary letters patent have been this day issued under the great seal of the Province of Manitoba, bearing date the day of , whereby the total capital stock (here state the name of the company) is increased (or decreased, as the case may be) from dollars to shares of dollars, (or whereby the capital stock of the company of shares of \$ each is subdivided into shares of each.).

Dated the office of the Provincial Secretary of Manitoba, this  
 , A.D. 19 .

day of

A.B.,  
 Provincial Secretary.

## **b) R. S. M. 1902, c. 27. An Act to Authorize the Changing of the Names of Incorporated Companies.**

**When company can change the name. 1.** When any incorporated company within the legislative authority of the Legislature of this Province, whether incorporated under a special or a general Act, is desirous of changing its name, the Lieutenant-Governor-in-Council, upon being satisfied that the company is in a solvent condition, that the change desired is not for any improper purpose and is not otherwise objectionable, and that the notice hereinafter provided for has been duly given, may, by order in council, change the name of the company to some other name set forth in the said order.

R. S. M. c. 23, § 1.

**Company to give four weeks' notice. 2.** The company shall give at least four weeks' previous notice in *The Manitoba Gazette*, and in some other newspaper published in or near the locality in which the operations of the company are carried on, of the intention to apply for the change of name, and shall state the name proposed to be adopted.

R. S. M. c. 23, § 2; 61 Vic. c. 8, § 1.

**Lieutenant-Governor-in-Council may give new name. 3.** In case the proposed new name is considered objectionable, the Lieutenant-Governor-in-Council may, if he thinks fit, change the name of the company to some other unobjectionable name without requiring any further notice to be given.

R. S. M. c. 23, § 3.

**Evidence of change. 4.** Such change shall be conclusively established by the insertion in *The Manitoba Gazette* of a notice thereof by the Provincial Secretary, for which a fee of five dollars shall be payable to the King's Printer.

R. S. M. c. 23, § 4.

**Change of name not to affect any previous contract. 5.** No contract or engagement entered into by or with the company and no liability incurred by it shall



be affected by the change of name; and all suits commenced by or against the company prior to the change of name may be proceeded with by or against the company, under its former name.

R. S. M. c. 23, § 5.

**c) 1909, c. 10. An Act respecting the Licensing of Extra-Provincial Corporations (2d March, 1909).<sup>1)</sup>**

**Meaning of expression, "extra-provincial corporation."** 1. In this Act the expression "extra-provincial corporation" means a corporation created otherwise than by or under the authority of an Act of the Legislature of Manitoba.

**Classes not required to take out licenses.** 2. Extra-provincial corporations of the classes mentioned in this section are not required to take out a license under this Act, viz: Class I. Corporations which have, before the commencement of this Act, received from the Government of Manitoba a license to carry on business in Manitoba, or which have been authorized by Act of the Legislature of Manitoba to carry on business in Manitoba, provided that such license or Act is in force at the date of the commencement of this Act; Class II. Corporations now or hereafter licensed or registered under the provisions of *The Manitoba Insurance Act*; Class III. Corporations liable to payment of taxes imposed by *The Corporations Taxation Act* or *The Railway Taxation Act*; Class IV. Corporations not having gain for any of their objects.

**Corporations that must take out licenses under Act.** 3. Extra-provincial corporations of the classes mentioned in this section are required to take out a license under this Act, viz., corporations (other than those mentioned in section 2) created by or under the authority of: Class V. An Act of the Dominion of Canada, and authorized to carry on business in Manitoba; Class VI. Corporations not coming within any of the foregoing classes.

**Dominion companies entitled to licenses on compliance with Act.** 4. A corporation coming within class V shall, upon complying with the provisions of this Act and the regulations made hereunder, receive a license to carry on its business and exercise its powers in Manitoba.

**Licenses to corporations of class VI may be restricted.** 5. A corporation coming within class VI may, upon complying with the provisions of this Act and the regulations made hereunder, receive a license to carry on the whole or such parts of its business and exercise the whole or such parts of its powers in Manitoba as may be embraced in the licence; subject, however, to such limitations and conditions as may be specified therein.

**Carrying on business in Manitoba without license prohibited to corporations required to take out licenses. Agencies prohibited, unless corporation licensed. Proviso. Application of section postponed in case of certain corporations. Onus of proof to be on accused.** 6. No extra-provincial corporation coming within class V or VI shall carry on within Manitoba any its business unless and until a license under this Act so to do has been granted to it, and unless such license is in force; and no company, firm, broker, agent, or other person shall, as the representative or agent of or acting in any other capacity for any such extra-provincial corporation, carry on any of its business in Manitoba unless and until such corporation has received such license and unless such license is in force; provided that taking orders for or buying or selling goods, wares and merchandise by travellers or by correspondence, if the corporation has no resident agent or representative and no office or place of business in Manitoba, shall not be deemed a carrying on of business within the meaning of this Act; provided further that this section shall not apply until the first day of November, A. D. 1909, to any such corporation which at the date of commencement of this Act is carrying on business in Manitoba; provided also that the onus of proving that a corporation has no resident agent or representative and no office or place of business in Manitoba, or that it was at the date of the commencement of this Act carrying on business in Manitoba, shall, in any prosecution for an offence against this section, rest upon the accused.

<sup>1)</sup> As amended by Acts, 1910, c. 15; 1911, c. 8.

**Applications to Government for licenses. Exercise of powers granted by license.**

7. An extra-provincial corporation coming within class V or VI may apply to the Lieutenant-Governor-in-Council for a license to carry on its business or part thereof, and exercise its powers or part thereof in Manitoba, and upon the granting of such license such corporation may thereafter while such license is in force carry on in Manitoba the whole or such parts of its business and exercise in Manitoba the whole or such parts of its powers as may be embraced in the license; subject, however, to the provisions of this Act and to such limitations and conditions as may be specified in the license.

*Formalities.*

**Documents to be filed with Provincial Secretary. Execution of power of attorney. Contents of. New power of attorney if agent or manager changed. Service of process against corporation upon attorney named to be good service. If head office in Manitoba, power of attorney not required.** 8. Any such company, institution, or corporation applying for such license shall file in the office of the Provincial Secretary of Manitoba a certified copy of the charter, Act of incorporation, or articles or memorandum of association of such company, institution, or corporation, with a declaration of proof that said company, institution, or corporation is still in existence and legally authorized to transact business under its said charter or Act of incorporation or articles or memorandum, and shall also file as aforesaid a power of attorney to some person resident in this Province, signed by the president or vice-president, or managing director, or two directors, and by the secretary thereof, sealed with the corporate seal (if any) of the said company, institution, or corporation and verified as to its authenticity by the statutory declaration of one of the principal officers of such company, institution, or corporation, or of any person cognisant of the facts necessary for such verification, which power of attorney must show the exact place of residence or business of the person so appointed, and must expressly authorize the person therein named, within the said Province, to accept service of process in all suits and proceedings against such company, institution, or corporation within the Province, and must declare that service of process on such persons in respect of such suits or proceedings shall be legal and binding on such company, institution, or corporation, to all intents and purposes whatever, and waiving all claims of error by reason of such service; and such company, institution, or corporation may from time to time, by a new or other power of attorney, verified as aforesaid, and accompanied by similar declaration as aforesaid, appoint another person resident within the Province for the purpose aforesaid, giving his exact address, to replace the attorney formerly appointed. a) After such certified copy of the charter and such power of attorney in this Province are filed as aforesaid, any process in any suit or proceedings against such company, institution, or corporation, for any liability, may be served upon such attorney, until he be so replaced as aforesaid, and thereafter upon his successor from time to time duly appointed hereunder, in the same manner as process may be served upon the proper officer of any company incorporated in the Province; and all proceedings may be had thereupon to judgment and execution in the same manner as in any civil suit in the Province. b) The provisions hereof, so far as they relate to the giving of a power of attorney to some person in this Province, and the filing of such power of attorney with the Provincial Secretary, shall not apply to any company, institution, or corporation having its head office within the Province of Manitoba.

Irregularities in service are waived by appearance. — *Crotty v. Oregon, etc., Co.*, (1885), 3 Man. 182.

**Proof of compliance with Act.** 9. Upon the application for a license the applicant shall establish to the satisfaction of the Provincial Secretary, or such other officer as may be charged by him to report thereon, that the provisions of this Act and the regulations made hereunder have been complied with; and the Provincial Secretary, the Deputy Provincial Secretary, or such other officer, may for the purposes aforesaid, or for any other purpose under this Act, take any requisite evidence in writing under oath or affirmation. Proof of any matter which may be necessary to be made under this Act may be made by statutory declaration or by affidavit or by deposition before the Provincial Secretary or Deputy Provincial Secretary, or other officer as aforesaid, or before any justice of the peace or commissioner for taking affidavits or notary public, who for this purpose are hereby authorized and empowered to administer oaths or to take affirmations, or, if made



outside of Manitoba, may be made before any person authorized to take affidavits under *The Registry Act*.

**Powers of licensed corporations as to dealing with real estate.** 10. A corporation receiving a license under this Act may, subject to the limitations and conditions of the license, and subject to the provisions of its own charter, Act of incorporation or other creating instrument, acquire, hold, mortgage, alienate, and otherwise dispose of real estate in Manitoba and any interest therein to the same extent and for the same purposes and subject to the same conditions and limitations as if such corporation had been incorporated under *The Manitoba Joint Stock Companies Act*, with power to carry on business and exercise the powers embraced in the licenses: a) Every mortgage, conveyance, lease, or other instrument affecting land, executed under the seal of any such corporation, or, in case such corporation has no seal, executed by such corporation, and signed by the president, vice-president, or manager of the corporation, and by the secretary or treasurer thereof, or by two of the directors, trustees, or other members of the board of management, or other governing body, shall be binding on the corporation according to the tenor and effect of such instrument.

Subsection a) does not apply to companies incorporated under R. S. C. 1906, c. 79. — Acts, 1911, c. 9, § 2.

**Notice of issue of license to be published by corporation in Gazette and newspaper. Contents of notice.** 11. Every company, institution, or corporation obtaining such license as aforesaid shall forthwith give notice thereof in *The Manitoba Gazette*, and in at least one newspaper in the municipality, city, or place where the principal agent or manager of such company, institution, or corporation in the Province transacts the business thereof or its head office is situated (if in this Province), of which one insertion in said *Gazette* and newspaper respectively shall be sufficient; and, unless the head office of such company, institution, or corporation is in Manitoba, such notice shall state the name of the agent or manager so appointed as aforesaid, or, when a new agent or manager shall be appointed under the provisions hereof, the name of such new agent or manager; and the like notice shall be given when such company shall cease to carry on business within the Province.

**Provisions as to matters preliminary to be deemed directory only.** 12. The provisions of this Act or of any Act or Acts for which this Act is substituted, relating to matters preliminary to the issue of license, shall be deemed to be directory only; and no licenses issued or which have heretofore been issued under this Act, or said Act or Acts hereinbefore referred to, shall be held void or voidable on account of any irregularity or insufficiency or non-existence of any matter preliminary to the issue of said license.

**Amount of real estate to be held may be limited in license.** 13. The powers of any company, corporation, or institution, licensed under the provisions of this Act with respect to acquiring and holding real estate, shall be limited in its license to such annual or actual value as may be deemed proper.

**Unlicensed corporations not to hold or deal in land.** 14. No company, corporation, or other institution, not incorporated under the provisions of the statutes of this Province, shall be capable of taking, holding, or acquiring any real estate within this Province, unless under license issued under any statute of this Province in that behalf.

The Canadian Pacific Railway Company, a Dominion company, may hold lands in Manitoba without complying with this Act, where such land was acquired by grant from the Dominion under an Act passed before Manitoba became a Province. — In re Canadian Pacific Railway Co., (1891), 7 Man. 389. Cp. In re Farmer's and Trader's Loan Co. v. Conklin, (1884), 1 Man. 181.

**Annual returns to be made by all licensed corporations. Form and contents. Further information to be given if required.** 15. A corporation receiving a license under this Act shall, on or before the eighth day of February in every year during the continuance of the license, make and transmit to the Provincial Secretary a statement under oath and according to a form approved of by the Lieutenant-Governor-in-Council, containing information similar to that required under section 70 of *The Manitoba Joint Stock Companies Act*, or so much thereof or such additional information as may be prescribed in such form, and the Lieutenant-Governor-in-Council may at any time require the corporation to supply such further and other information as shall seem to him to be reasonable and proper.

**Suspension or revocation of license for default. Removal of suspension or revocation. Notice in Gazette. 16.** If a corporation receiving a license under this Act makes default in observing or complying with the limitations and conditions of such license, or the provisions of section 15 of this Act, or the regulations respecting the appointment and continuance of a representative in Manitoba, the Lieutenant-Governor-in-Council may suspend or revoke such license in whole or in part, and may remove such suspension or cancel such revocation and restore such license. Notice of such suspension, revocation, removal, or restoration shall be given by the Provincial Secretary in *The Manitoba Gazette*.

**Penalty for contravention of section 6 by company. Unlicensed corporations incapable of maintaining actions. If license granted or restored, action may be proceeded with. 17.** If any extra-provincial corporation coming within class V or VI shall, contrary to the provisions of section 6 hereof, carry on in Manitoba any part of its business, such corporation shall incur a penalty of fifty dollars for every day upon which it so carries on business; and so long as it remains unlicensed under this Act it shall not be capable of maintaining any action, suit, or other proceeding in any court in Manitoba in respect of any contract made in whole or in part within Manitoba in the course of or in connection with business carried on contrary to the provisions of said section 6; provided, however, that upon the granting or restoration of the license, or the removal of any suspension thereof, such action, suit, or other proceeding may be maintained as if such license had been granted or restored, or such suspension had been removed, before the institution thereof.

**Penalty for breach of section 6 by agent of corporation. 18.** If any company, firm, broker, agent, or other person shall, contrary to the provisions of section 6 hereof, as the representative or agent of or acting in any other capacity for an extra-provincial corporation, carry on any of its business in Manitoba, such company, firm, broker, agent, or other person shall incur a penalty of twenty dollars for every day upon which it, he, or they so carry on such business.

**Remission of penalties if license taken out. 19.** The Lieutenant-Governor-in-Council may, when or after granting a license remit in whole or in part any penalty incurred under this Act by the corporation receiving the license or by any representative or agent thereof, and may also remit in whole or part the costs of any action or proceeding commenced for the recovery of any such penalty, and thereupon the whole or such part of the costs, as the case may be, shall not be recoverable.

**Recovery of penalties. Limitation of action. 20.** The penalties imposed by this Act shall be recoverable only by action in a civil court of competent jurisdiction at the suit of or brought with the written consent of the Attorney-General of Manitoba, and any action or proceeding to recover any such penalty shall be commenced within six months after the liability for such penalty has been incurred, and not afterwards.

**Fees for licenses under this Act. In case of companies now carrying on business in Manitoba as well as elsewhere. Reduction of fees in view of nature and importance of business proposed to be carried on in Manitoba. Information to be given on applying for reduction. Fees to be paid with annual returns. 21.** For a license to a corporation coming within class V or VI, such corporation shall pay to His Majesty for the public uses of Manitoba such fees as may be fixed by the Lieutenant-Governor-in-Council, and no license shall be issued until the fee therefor is paid; provided that, with respect to a company carrying on business in Manitoba when this Act is passed, and carrying on also an established business outside of Manitoba, the Lieutenant-Governor-in-Council may reduce the fee payable for its license to such sum as he may think just, having regard to the nature and importance of its business in Manitoba and the amount of capital used therein; provided also that, with respect to a company not carrying on business in Manitoba when this Act is passed, but carrying on outside of Manitoba an established business, when applying for a license under this Act, the Lieutenant-Governor-in-Council may reduce the fee payable for such license to such sum as he may think just, having regard to the nature and importance of the business proposed to be carried on in Manitoba and the amount of capital proposed to be used therein. A company seeking a reduction under this section shall give to the Provincial Secretary such statements and information respecting its business and financial position as he may call for, and shall verify the same in such manner as he may require. There



shall be paid to His Majesty for the public uses of Manitoba upon transmitting to the Provincial Secretary the statement required by section 15 hereof, the fee of five dollars if the capital stock of the company does not exceed the sum of one hundred thousand dollars, and a fee of ten dollars if the capital stock of the company exceeds the said sum of one hundred thousand dollars, and until such fee has been paid such statement shall be deemed not to have been made and transmitted as required by said section.

**Special license for dealing in real estate or lending money therein.** Fee for such license. Compliance with section 15 may be dispensed with in whole or in part. License to be deemed to ratify and confirm all previous acts. Exception as to pending suits. 22. An extra-provincial corporation which is not required by this Act to take out a license may apply for and receive a license authorizing it, subject to the limitations and conditions of the license, and subject to the provisions of its own charter, Act of incorporation or other creating instrument, to acquire, hold, mortgage, alienate, and otherwise dispose of or lend money on the security of real estate in Manitoba and any interest therein to the same extent and for the same purposes and subject to the same conditions and limitations as if such corporation had been incorporated under *The Manitoba Joint Stock Companies Act*, with power to carry on the business or exercise the powers embraced in the license. For such license there shall be paid to His Majesty for the public uses of Manitoba such fee as the Lieutenant-Governor may prescribe, and compliance with section 15 hereof may be dispensed with by the Lieutenant-Governor in whole or in part. Any such license obtained by any such corporation shall be deemed to ratify and confirm all previous acts of the corporation, and shall be construed as if such license had been granted before such corporation commenced to carry on business in Manitoba; saving all matters or things which shall have been questioned before the taking out of such license by proceedings commenced in any court of law in this Province.

**Annual returns to Legislature.** 23. A statement showing the licenses issued under this Act during the preceding calendar year and the authorized capital stocks of the companies licensed and the fee paid for each license shall be laid before the Legislature at each session thereof.

#### *Evidence of license.*

**Certificate as evidence of license.** 24. A certificate under the hand of the Provincial Secretary or Deputy Provincial Secretary of the issue of such license shall be received as prima facie evidence in all courts of justice and other tribunals that such license has been duly issued and is in force; and the Provincial Secretary or Deputy Provincial Secretary shall furnish such certificate to any person on payment of a fee of one dollar.

**Notice of this Act to be published in official gazettes of Canada and all the Provinces.** 25. Notice of the passing of this Act, in such form and with such particulars thereof as the Provincial Secretary may think proper, shall be published by him in *The Manitoba Gazette* and in *The Canada Gazette*, and in the official gazette or other official publication of each Province of Canada for such time as to him may seem best.

**Repeal.** 26. *The Foreign Corporations Act*, being chapter 28 of the Revised Statutes of Manitoba, 1902, is hereby repealed.

**When Act in force.** 27. This Act shall come into force on and after the first day of November, A. D. 1909.

### **d) 1911, c. 10. An Act to amend An Act respecting the Licensing of Extra-Provincial Corporations (24th March, 1911).**

**Forfeiture of certain licenses.** 1. All licenses heretofore granted under "An Act respecting the Licensing of Extra-Provincial Corporations," being chapter 10 of 9 Edward VII, to companies or corporations incorporated by or under the authority of a statute of any of the other Provinces of Canada, in which Provinces companies incorporated under the laws of Manitoba are denied similar licenses or privileges to do business in such Provinces, are hereby declared null and void, and all said companies are hereby replaced in the position they would have occupied under the said Act if they had not received such licenses.

**Additional facts to be shown. 2.** Every extra-provincial corporation incorporated by or under the authority of an Act of the Legislature of any other Province of Canada applying hereafter for a license under said Act shall, in addition to the other formalities required, produce evidence to show that similar licenses or privileges are granted to Manitoba companies in the Province where the head office of such company is situated.

**Commencement of Act. 3.** This Act shall come into force on proclamation of the Lieutenant-Governor-in-Council.

## e) R. S. M. 1902, c. 175. An Act respecting the Winding-up of Joint Stock Companies.

### *Short title.*

**Short title. 1.** This Act may be cited as *The Joint Stock Companies Winding-up Act*.

### *Application.*

**Application of Act. 2.** This Act shall apply to all incorporated companies or associations incorporated by the Legislature of this Province, or under the authority of any Act of this Province, and to all companies and associations, whose incorporation and the affairs thereof, in the particulars hereinafter mentioned, are subject to the legislative authority of this Province.

62 & 63 Vic. c. 43, § 2. See note to Dominion *Winding-up Act*, § 2, *supra*.

### *Interpretation.*

**Interpretation. 3.** In this Act, unless the context otherwise requires: a) The expression "Court" means the Court of King's Bench, and any Judge of the Court may at any time, whether sitting in Chambers or in Court, exercise all the powers conferred by this Act upon the Court; b) The expression "contributory" means every person liable to contribute to the assets of a company under this Act, in the event of the same being wound up; and, also, in all proceedings prior to the final determination of such persons, includes any person alleged to be a contributory; c) If a contributory dies, either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs, and devisees shall be liable in due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly; d) The expression "extraordinary resolution" means a resolution passed by a majority of not less than three-fourths of such members of the company, for the time being entitled to vote, as may be present in person, or by proxy (in cases where by the Act or charter or instrument of incorporation or the regulations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given; e) The expression "special resolution" means a resolution passed in the manner necessary for an extraordinary resolution, where the resolution after having been so passed as aforesaid has been confirmed by a majority of such members (entitled according to the Act, charter, or instrument of incorporation or the regulations of the company to vote) as may be present, in person or by proxy, at a subsequent general meeting of which notice has been duly given, and held at an interval of not less than fourteen days, or more than one month from the date of the meeting at which the resolution was first passed; f) Those persons only who for the time being are entitled to vote at general meetings of the company for the purposes of this Act shall be deemed to be members of the company.

62 & 63 Vic. c. 43, § 3.

### *When companies may be wound up.*

**When companies may be wound up voluntarily. On special resolution. On extraordinary resolution. 4.** A company may be wound up under this Act: a) Where the period, if any, fixed for the duration of the company by the Act, charter, or instrument of incorporation has expired; or where the event, if any, has occurred, upon the occurrence of which it is provided by the Act or charter or instrument



of incorporation that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up; b) Where the company has passed a special resolution (as hereinbefore defined) requiring the company to be wound up; c) Where the company (though it may be solvent as respects creditors) has passed an extraordinary resolution (as hereinbefore defined) to the effect that it has been proved to their satisfaction that the company can not by reason of its liabilities continue its business, and that it is advisable to wind up the same.

62 & 63 Vic. c. 43, § 4.

**When by order of the Court.** 5. Where no such resolution has been passed as mentioned in the next preceding section, the Court may, on the application of a contributory, make an order for winding up, in case the Court is of opinion that it is just and equitable that the company should be wound up.

62 & 63 Vic. c. 43, § 5.

**Commencement of winding up.** 6. A winding-up shall be deemed to commence at the time of the passing of the resolution authorizing the winding-up, or of making the order directing the winding-up.

62 & 63 Vic. c. 43, § 6.

#### *Registration.*

**Registration of winding-up order.** 7. A copy of the resolution or order for winding-up, certified by the liquidator, may be registered in the land titles office or registry office of any land titles or registration district wherein the company has any real estate; the resolution or order shall be accompanied by a description of the real estate belonging to the company in the land titles or registration district, and certified by the liquidator to be a correct description; and the district registrar or registrar shall register the order and, description upon payment to him of a fee of one dollar.

62 & 63 Vic. c. 43, § 7.

#### *Consequences of commencing to wind up.*

**Consequences of commencing to wind up. Extent to which company to exist after commencement of winding-up. Transfer of shares. Property of company. Liquidators. Appointment of liquidators. Remuneration. Security. One liquidator. When powers of directors to cease. Powers of several liquidators. Appointment of inspectors. Revocations. Remuneration. Directions as to disposal of property of the company by liquidation.** 8. The following consequences shall ensue upon the commencement of the winding-up of a company under the authority of this Act: a) The company shall, from the date of the commencement of the winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof; and any transfers of shares, except transfers made to or with the sanction of the liquidators, or any alteration in the status of the members of the company, after the commencement of the winding-up, shall be void, but the corporate state and all the corporate powers of the company shall, notwithstanding it may be otherwise provided by the Act, charter, or instrument of incorporation, continue until the affairs of the company are wound up; b) The property of the company shall be applied in satisfaction of its liabilities and, subject thereto and to the charges incurred in winding-up its affairs (unless it is otherwise provided by the Act, charter, or instrument of incorporation), be distributed amongst the members according to their rights and interests in the company; c) Liquidators shall be appointed for the purpose of winding-up the affairs of the company and distributing the property; d) The company in general meeting, or in default thereof the Court, shall appoint such persons or person as the company or Court thinks fit to be liquidators, or a liquidator, and may fix the remuneration to be paid to them or to him, and they shall give such security as the contributories or the Court may determine; e) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him; f) Upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the company in general meeting, or the liquidators, may sanction the continuance of such powers; g) Where several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of the appointment, or at a subsequent meeting, or, in default of such determination, by any number not less than two; h) The members of the company may at any meeting appoint one

or more inspector or inspectors, to superintend and direct the proceedings of the liquidator in the management and winding-up of the estate; and in case of an inspector being appointed, all the powers of the liquidator shall be exercised subject to the advice and direction of the inspectors; and the members of the company may also at any subsequent meeting held for that purpose, revoke any such appointment; and, upon such revocation, or in case of death, resignation, or absence from the Province of an inspector, may appoint another in his stead; and such inspector may be paid such remuneration as the members of the company may determine; and where anything is allowed or directed to be done by the inspectors, it may or shall be done by the sole inspector, if only one has been appointed; i) The members of the company may, at any meeting, pass any resolution or order, directing the liquidator how to dispose of the property, real or personal, of the company; and in default of their doing so, the liquidator shall be subject to the directions, orders, and instructions which he from time to time receives from the inspectors, if any, with regard to the mode, terms, and conditions on which he may dispose of the whole or any part of the property of the company.

62 & 63 Vic. c. 43, § 8.

*General powers of liquidators.*

**Description and general power of liquidator. 9.** The liquidator may be described in all proceedings by the style of "A. B., the liquidator of (*the particular company in respect of which he is appointed*)," and shall have power to do the following things: a) To bring or defend any action, or other legal proceeding, in the name and on behalf of the company; b) To carry on the business of the company so far as may be necessary for the beneficial winding-up of the same; c) To sell the real and personal property of the company by public auction or private contract, according to the ordinary mode in which such sales are made, with power to transfer the whole property to any person or company, or to sell the same in parcels, and on such terms as shall seem most advantageous; but no sale of the assets en bloc shall be made without the previous sanction of the contributories given at a meeting called for that purpose; d) And in case, after having acted with due diligence in the collection of the debts, the liquidator finds that there remain debts due, the attempt to collect which would be more onerous than beneficial to the estate, he shall report the same to the members of the company or inspectors (if any); and with their sanction, he may sell the same by public auction after such advertisement thereof as they may order; and pending such advertisement, the liquidator shall keep a list of the debts to be sold, open to inspection at his office, and shall also give free access to all documents and vouchers explanatory of such debts; but all debts amounting to more than one hundred dollars shall be sold separately, except as herein otherwise provided; e) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company; and to raise upon the security of the assets of the company, from time to time, any requisite sum or sums of money; and the drawing, accepting, making, or indorsing of such bill of exchange or promissory note on behalf of the company shall have the same effect, with respect to the liabilities of the company, as if such bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of carrying on the business thereof; f) To take out, if necessary, in his official name, letters of administrations to any deceased contributory; and to do in his official name any other act which may be necessary for obtaining payment of any money due from a contributory or from his estate, and which act can not be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name, for obtaining payment of any money due from a contributory, such money shall, for the purpose of enabling him to take out such letters or recover such money, be deemed to be due to the liquidator himself; g) To execute in the name of the company all deeds, receipts, and other documents; h) And to do and exercise all other acts and things that may be necessary for the winding-up of the affairs of the company and the distribution of its assets; and for such purposes to use when necessary the company's seal.

62 & 63 Vic. c. 43, § 9.

**Time for creditors to send in claims may be fixed. Liquidators may distribute assets after expiration of time fixed. 10.** The liquidator may fix a certain day or certain days on or within which creditors of the company and others having claims



thereon are to send in their claims. a) Where a liquidator has given such or the like notices of the said day as, in administration proceedings, would be given by the Court, for creditors and others to send in to an executor or administrator their claims against the estate of a testator or intestate, the liquidator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the company, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which the liquidator has then notice; and the liquidator shall not be liable for the assets, or any part thereof, so distributed to any person of whose claim such liquidator had not notice at the time of distributing the said assets, or a part thereof, as the case may be; but nothing in this Act contained shall prejudice the right of any creditor or claimant to follow assets into the hands of the person who may have received the same.

62 & 63 Vic. c. 43, § 10.

**Priority of wages or salary. 11.** In distributing the assets of a company under the provisions of this Act, the liquidator shall pay in priority to the claims of the ordinary or general creditors of the company the wages or salary of all persons other than directors in the employment of the company at the time of the making of the winding-up resolution or order, or within one month before the making thereof, not exceeding three months' wages or salary, and such persons shall be entitled to rank as ordinary or general creditors of the company for the residue, if any, of their claims.

[62 & 63 Vic. c. 43, § 11.

**Arrangements may be authorized with creditors. 12.** The liquidators may, with the sanction of an extraordinary resolution of the company, or of the Court, make such compromise or other arrangement as the liquidators deem expedient, with any creditors, or persons claiming to be creditors, or persons having or alleging to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable.

[62 & 63 Vic. c. 43, § 12.

**Power to compromise with debtors and contributories. Take security. 13.** The liquidators may, with the sanction of an extraordinary resolution of the company, or of the Court, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company, or the winding-up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms, as may be agreed upon; with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give a complete discharge in respect of all or any such calls, debts, or liabilities.

62 & 63 Vic. c. 43, § 13.

**Power to accept shares, etc., as consideration for sale of property to another company. Sale or arrangement by liquidators binding unless a member objects. Proceedings on objection. Special resolution not invalid because prior to resolution to wind up. Price payable to objecting member. Mode of determining price. Arbitration. Majority to determine disputes. Umpire. 14.** When a company is proposed to be or is in the course of being wound up, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company, with the sanction of a special resolution of the company by whom they were appointed conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, may receive, in compensation or in part compensation for such transfer or sale, shares or other like interest in such other company, for the purpose of distribution amongst the members of the company which is being wound up, or may, in lieu of receiving cash, shares, or other like interest, or in addition thereto, participate in the profits or receive any other benefit from the purchasing company. a) Any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company which is being wound up, subject to the proviso that, if any member of the company which is being wound up, who has

not voted in favor of the special resolution passed by the company of which he is a member, at either of the meetings held for passing the same, expresses his dissent from any such special resolution, in writing, addressed to the liquidators or one of them, and left at the head office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer, that is to say, either: a) to abstain from carrying such resolution into effect, or b) to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution; b) No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; c) The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement; but if the parties dispute about the same such dispute shall be settled by arbitration; d) For the purposes of the arbitration the liquidator shall appoint one arbitrator, and the dissentient member shall appoint another, and the two arbitrators thus chosen (or in case they disagree, the Court) shall appoint a third arbitrator; e) The arbitrators thus chosen or any two of them, or the arbitrator of one party and an arbitrator appointed by the Court (in case of the refusal or neglect of either party to appoint an arbitrator), shall finally determine the matter in dispute; f) In case of the disagreement of two arbitrators, where two only are acting, they may appoint an umpire, whose award shall be conclusive.

62 & 63 Vic. c. 43, § 14.

#### *Liability of contributories.*

**Liquidators to settle list of contributories. Shareholders liability to contribute. Case of transfer of shares by shareholder. Contributories liable in a representative character to be distinguished in list. List to be evidence of liability.** 15. As soon as may be after the commencement of the winding-up of a company, the liquidator shall settle a list of contributories. a) Every shareholder or member of the company or his representative is liable to contribute the amount unpaid on his shares of the capital, or on his liability to the company or to its members or creditors, as the case may be, under the Act, charter, or instrument of incorporation of the company; and the amount which he is liable to contribute shall be deemed assets of the company, and to be a debt due to the company payable as may be directed or appointed under this Act; b) Where a shareholder has transferred his shares under circumstances which do not by law free him from liability in respect thereof, or where he is by law liable to the company or its contributories or any of them to an amount beyond the amount unpaid on his shares, he shall be deemed a member of the company for the purposes of this Act, and shall be liable to contribute as aforesaid to the extent of his liabilities to the company or the contributories independently of this Act, and the amount which he is so liable to contribute shall be deemed assets and a debt as aforesaid; c) The list of contributories shall distinguish between persons who are contributories as being representatives of or liable for others. d) Any list so settled shall be prima facie evidence of the liability of the persons named therein to be contributories.

62 & 63 Vic. c. 43, § 15.

**Settlement of list by the Court. Procedure on settling list by the Court. Certificate of result of settlement.** 16. The list of contributories may be settled by the Court, in which case the liquidator shall make out and leave at the chambers of the Judge a list of the contributories of the company; and such list shall be verified by the affidavit of the liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to, each such contributory, and distinguish the several classes of contributories; and the list may from time to time, by leave of the Judge, be varied or added to by the liquidator. a) Upon the list of contributories being left at the chambers of the Judge, the liquidator shall obtain an appointment for the Judge to settle the same, and shall give notice in writing of the appointment to every person included in the list, and stating in what character, and for what number of shares, or what interest, such person is included in the list; and in case any variation in or addition to the lists is at any time made by the liquidator, a similar



notice in writing shall be given to every person to whom the variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition; b) The result of the settlement of the list of contributories shall be stated in a certificate by the clerk or registrar of the Court; and certificates may be made from time to time for the purpose of stating the result of the settlement down to any particular time, or to any particular person, or stating any variation of the list.

62 & 63 Vic. c. 43, § 16.

**Provision for administration if personal representative fails to pay. 17.** If a person made a contributory as personal representative of a deceased contributory makes default in paying any sum to be paid by him, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereof of the money due.

62 & 63 Vic. c. 43, § 17.

**Calls on contributories. 18.** The liquidators may, at any time and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories, for the time being settled on the list of contributories, to pay, to the extent of their liability, all or any sums the liquidators deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the call is made may partly or wholly fail to pay their respective portions of the same.

62 & 63 Vic. c. 43, § 18.

#### *Liquidators' duties.*

**Employment of counsel. Liquidators or inspectors not to purchase assets of company. Deposit in bank by liquidator. Separate deposit account to be kept; withdrawal from account. Liquidator to produce bank pass book at meetings, etc. Liquidator to produce bank pass book when ordered. Liquidator and inspector to be subject to summary jurisdiction of Court. Obedience, how enforced. 19.** No liquidator shall employ any counsel, or solicitor without the consent of the inspectors, or of the members of the company: a) No liquidator or inspector shall purchase, directly or indirectly, any part of the stock in trade, debts, or assets of any description of the estate; b) The liquidator shall deposit at interest in some chartered bank, to be indicated by the inspectors or by the Court, all sums of money which he may have in his hands, belonging to the company, whenever such sums amount to one hundred dollars; c) Such deposit shall not be made in the name of the liquidator generally, on pain of dismissal; but a separate deposit account shall be kept for the company of the moneys belonging to the company, in the name of the liquidator as such and of the inspectors (if any); and such moneys shall be withdrawn only on the joint cheque of the liquidator and one of the inspectors, if there be any; d) At every meeting of the members of the company the liquidators shall produce a bank pass-book, showing the amount of deposits made for the company, the dates at which the deposits were made, the amounts withdrawn and dates of such withdrawal; of which production mention shall be made in the minutes of the meeting, and the absence of such mention shall be prima facie evidence that the pass-book was not produced at the meetings; e) The liquidator shall also produce the pass-book whenever so ordered by the Court at the request of the inspectors or a member of the company, and on his refusal to do so he shall be treated as being in contempt of Court; f) Every liquidator or inspector shall be subject to the summary jurisdiction of the Court in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction; and the performance of his duties may be compelled, and all remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, lien or right of property upon, in or to any effects or property in the hands, possession, or custody of a liquidator, may be obtained, by an order of the Court on summary petition, and not by any action, attachment, seizure, or other proceeding of any kind whatever; and obedience by the liquidator to such order may be enforced by the Court under the penalty of imprisonment, as for contempt of Court or disobedience thereto; or he may be removed in the discretion of the Court.

62 & 63 Vic. c. 43, § 19.

*Expenses.*

**Costs and expenses. 20.** All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

62 & 63 Vic. c. 43, § 20.

**Remuneration of liquidators in case no other fixed. 21.** In case of there being no agreement or provision fixing the remuneration of a liquidator, he shall be entitled to a commission on the net proceeds of the estate of the company of every kind, after deducting expenses and disbursements, such commission to be of five per cent. on the amount realized, not exceeding one thousand dollars, the further sum of two and a half per cent. on the amount realized in excess of one thousand dollars, and not exceeding five thousand dollars, and a further sum of one and a quarter per cent. on the amount realized in excess of five thousand dollars; which said commission shall be in lieu of all fees and charges for his services.

62 & 63 Vic. c. 43, § 21.

*Meetings.*

**Filling vacancies in office of liquidator. General meetings during winding up. Annual meetings. Liquidators to call meetings of members of company. Subsequent meetings. Where meetings to be held. One mode of giving notice of meeting. Another mode of notice of meeting. Voting to be in person or by proxy. Scale of votes.**

**22.** a) If a vacancy in the office of liquidators appointed by the company occurs by death, resignation, or otherwise, a general meeting for the purpose of filling up the vacancy may be convened by the continuing liquidators, if any, or, if not, then by any member of the company; b) The liquidators may from time to time, during the continuance of the winding-up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purposes they think fit; c) In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding up, or as soon thereafter as may be convenient; and shall lay before the meeting an account, showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year; d) The liquidator shall also call meetings of the members of the company whenever required in writing so to do, by the inspector or five members of the company or by the Court, and he shall state succinctly in the notice calling any meeting the purpose thereof; e) The members of the company may, from time to time, at any meeting, determine where subsequent meetings shall be held; and in the absence of such a resolution all meetings of the members of the company shall be held at the office of the liquidator or of the company, unless otherwise ordered by the Court; f) Notice of any meeting shall for the purposes of this Act be deemed to be duly given, and the meeting to be duly held, whenever the notice is given and meeting held in manner prescribed by the Act, charter, or instrument of incorporation, or by the regulations of the company, or by the Court; g) Notice of the meeting may be given by publication thereof for at least two weeks in *The Manitoba Gazette*, or by such other or additional notice as the Court, the inspector or the company may direct, and by also, except where the Court otherwise directs, addressing notices of the meeting to the contributories within the Province, and to the representatives, within the Province, of contributories who reside out of the Province; and the notices shall be posted at least ten days before the day on which the meeting is to take place, the postage being prepaid by the liquidator; h) No member of the company shall vote at any meeting unless present personally, or represented by some person having a written authority (to be filed with the liquidator) to act on his behalf at the meeting or generally; and when a poll is taken, reference shall be had to the number of votes to which each member is entitled by the Act, charter, or instrument of incorporation or the regulations of the company.

62 & 63 Vic. c. 43, § 22.

*Assistance of the Courts.*

**Applications to the Court. Stay of action against company before order to wind up. Stay of action after commencement of winding-up. Settlement of list of contributories. Meetings of members of company may be ordered. Chairman. Order**



for delivery by contributories and others of property, etc. Order for payment by contributories. Power to order payment into a bank to account of official liquidator. Order on contributory to be conclusive evidence. Inspection of books. Examination of persons before Court or liquidator. Production of books, etc. Penalty on person summoned not attending. Mode of examination. Subpoenas. Liens. Power of Court to assess damages against delinquent directors, et al. 23. The liquidator or any member of the company may apply to the Court to determine any question arising in the matter of the winding-up; or to exercise all or any of the powers following; and the Court, if satisfied that the determination of the question, or the required exercise of power, will be just and beneficial, may accede wholly or partially to the application, on such terms and subject to such conditions as the Court thinks fit; or it may make such other order on the application as the Court thinks just: a) The Court, at any time after the presentation of a petition for winding up a company and before making an order for winding up the company, may restrain further proceedings in any action or proceeding against the company (except under the insolvent Acts in force at the time, or any other authority over which this Legislature has no jurisdiction), in and upon such terms as the Court thinks fit; b) The Court may make an order that no action or other proceedings shall be proceeded with or commenced against the company except with the leave of the Court, and subject to such terms as the Court may impose; but this subsection shall not apply to proceedings under any Act of the Parliament of Canada under its jurisdiction in matters of bankruptcy and insolvency or otherwise. A copy of such order shall forthwith be advertised as the Court may direct; c) The Court may settle the list of contributories; d) The Court may direct meetings of the members of the company to be summoned, held and conducted in such manner as the Court thinks fit, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. e) The Court may require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker, agent, or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled; f) The Court may make an order on any contributory, for the time being settled on the list of contributories, directing payment to be made, in manner in the order mentioned, of moneys due from him or from the estate of the person whom he represents to the company, exclusive of moneys which he or the estate or the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Act; g) The Court may order any contributory, purchaser, or other person from whom money is due to the company to pay the same into any bank appointed for this purpose in any general order made under this Act, or in default of such bank into a bank named in the order, or into a branch of such bank, to the account of the liquidator, instead of to the liquidator, and the order may be enforced in the same manner as if it had directed payment to the liquidator; h) An order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due, or ordered to be paid, are due; and all other pertinent matters stated in the order are to be taken to be truly stated, as against all persons, and in all proceedings whatsoever; i) The Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just; and any books and papers in the possession of the company may be inspected in conformity with the order of the Court, but not further or otherwise; j) The Court may, at any time after the commencement of the winding up of the company, summon to appear before the Court or liquidator any officer of the company, or any other person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company; and in case of refusal to appear or answer the questions submitted, he may be committed and punished by the Judge as for a contempt; k) The Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his

custody or power relating to the company; l) If any person so summoned, after being tendered the fees to which a witness is entitled in the Court, refuses to come before the Court or liquidator at the time appointed, having no lawful impediment, the Court may cause such person to be apprehended, and brought before the Court or liquidator for examination; m) The Court or liquidator may examine, upon oath, any person appearing or brought before it or him in the manner aforesaid, concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same; n) In any proceeding under this Act, the Court may order a writ of subpoena ad testificandum or of subpoena duces tecum to issue, commanding the attendance as a witness of any person within the limits of Manitoba; o) Where any person claims a lien on papers, deeds, writings, or documents produced by him, such production shall be without prejudice to the lien; and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien; p) Where in the course of winding-up a company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of the company, has misapplied, or retained in his own hands, or become liable or accountable for, moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of a liquidator, or of any contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay the moneys so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company, by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

62 & 63 Vic. c. 43 § 23.

**Proceedings by contributories, at their own expense and for their own benefit only.** 24. If at any time a member of the company desires to cause any proceeding to be taken which, in his opinion, would be for benefit of the company, and the liquidator, with or without the authority of the members of the company or of the inspectors, refuses or neglects to take such proceeding, after being duly required so to do, such member of the company shall have the right to obtain an order of the Court, authorizing him to take such proceeding in the name of the liquidator or company, but at his own expense and risk, upon such terms and conditions as to indemnity to the liquidator, as the Court may prescribe; and thereupon any benefit derived from such proceeding shall belong exclusively to the member of the company instituting the same, for his benefit and that of any other member of the company who may have joined him in causing the institution of such proceeding; but if, before such order is granted, the liquidator signifies to the Court his readiness to institute such proceeding for the benefit of the company, an order shall be made prescribing the time within which he shall do so, and in that case any advantage derived from such proceeding shall appertain to the company.

62 & 63 Vic. c. 43, § 24.

**Appointment by Court. Removal of liquidator. In case of no liquidator.** 25. If from any cause there is no liquidator acting, either provisionally or otherwise, the Court may, on the application of a member of the company, appoint a liquidator or liquidators: a) The Court may also, on due cause shown, remove a liquidator and appoint another liquidator; b) When there is no liquidator the estate shall be under the control of the Court until the appointment of a new liquidator.

62 & 63 Vic. c. 43, § 25.

**Rescinding of resolution, etc., by the Court. Confirmation or variation of resolutions, etc. Costs.** 26. Any one or more members of the company whose shares therein in the aggregate exceed five hundred dollars, who may be dissatisfied with the resolutions adopted or orders made by the members of the company or the inspectors, or with any action of the liquidator for the disposal of the property of the company, or any part thereof, or for postponing the disposal of the same, or with reference to any matter connected with the management or winding-up of the estate, may, within four clear days after the meeting of the members of the company in case the subject of dissatisfaction is a resolution or order of the members of the company, or within four clear days after becoming aware or having notice of the resolution of the inspectors or action of the liquidator where such resolutions



or action is the subject of dissatisfaction, give to the liquidator notice that he or they will apply to the Court, on the day and at the hour fixed by such notice (and not being later than four clear days after such notice has been given), or as soon thereafter as the parties may be heard before the Court, to rescind such resolutions or orders: a) The Court, after hearing the inspectors, the liquidators and members of the company present at the time and place so fixed, may approve, rescind, or modify the said resolutions or orders; b) In case of the application being refused the party applying shall pay all costs occasioned thereby, and in other cases the costs and expenses shall be in the discretion of the Court.

62 & 63 Vic. c. 43, § 26.

**Appeals. Security for damages and costs. Dismissal of appeal. Judgment final.**

**27.** Any party who is dissatisfied with any order or decision of the Court in any proceeding under this Act may appeal therefrom to the Court in banc: a) No such appeal shall be entertained unless the appellant has, within eight days from the rendering of such order or decision, taken proceedings on the said appeal, nor unless within the said time he has made a deposit or given security, to the satisfaction of a Judge, that he will duly prosecute the said appeal and pay such damages and costs as may be awarded to the respondent; b) If the party appellant does not proceed with his appeal, as the case may be, according to the law or the rules of practice, the Court, on the application of the respondent, may dismiss the appeal, and condemn the appellant to pay the respondent the costs by him incurred; c) The judgment of the Court in such appeal shall be final.

62 & 63 Vic. c. 43, § 27.

**Powers of Court to be in addition to other powers. 28.** Any powers by this Act conferred on the Court shall be deemed to be in addition to any other power of instituting proceedings against any contributory, or against any debtor of the company, for the recovery of any call or other sum due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

62 & 63 Vic. c. 43, § 28.

**Enforcing of orders. Powers of the Court. 29.** All orders made by the Court may be enforced in the same manner as orders of such Court made in any action pending therein, or as orders of the Court under the insolvent Acts in force at the time, may be enforced; and for the purposes of this Act, the Court and the Judges thereof shall, in addition to their ordinary powers, have the same power of enforcing any orders made by them as the Court has in relation to matters within its jurisdiction.

62 & 63 Vic. c. 43, § 29.

*Matters of practice.*

**Petition on winding up. Course of Court on hearing petition. 30.** Any application to the Court for the winding-up of a company under this Act shall be by petition; and the petition may be presented by the company, or by any contributory or contributories of the company: a) Upon hearing the petition the Court may dismiss the same, with or without costs, or may adjourn the hearing conditionally or unconditionally, and may make an interim order, or any other order that it deems just.

62 & 63 Vic. c. 43, § 30.

**Stay of proceedings. 31.** The Court, at any time after an order has been made for the winding up of a company, may, upon the application by motion of any contributory, and upon proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as the Court deems fit.

62 & 63 Vic. c. 43, § 31.

**Rules of procedure in ordinary cases, etc., to apply. Amendments. 32.** The rules of procedure for the time being as to amendments of pleadings and proceedings in the Court shall, as far as practicable, apply to all pleadings and proceedings under this Act; and any Court or liquidator before whom such proceedings are being carried on shall have full power and authority to apply the appropriate rules as to amendments to the proceedings so pending before it or him; and no pleading or proceeding shall be void by reason of any irregularity or default which can or may be amended or disregarded under the rules and practice of the Court.

62 & 63 Vic. c. 43, § 32.

**Language of proceedings, etc. 33.** In every petition, application, motion, or other pleading or proceeding under this Act, the parties may state the facts upon which they rely, in plain and concise language; and to the interpretation thereof, the rules of construction applicable to such language in the ordinary transactions of life shall apply.

62 & 63 Vic. c. 43, § 33.

**Books, etc., to be prima facie evidence. 34.** All books, accounts and documents of the company and of the liquidator shall, as between the contributories and the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

62 & 63 Vic. c. 43, § 34.

**Service of subpoena, etc. 35.** All rules, writs of subpoena, orders, and warrants issued by the Court in any matter or proceedings under this Act may be validly served in any part of Manitoba upon the party affected or to be affected thereby, and the service of them may be validly made in such manner as is now prescribed for similar services, and the person charged with such service shall make his return thereof under oath.

62 & 63 Vic. c. 43, § 35.

**Length of notice of proceedings. Service of notice. 36.** Except where otherwise provided, four clear juridical days' notice of any petition, motion, order, or rule shall be sufficient; and service of such notice shall be made in such manner as a similar service in an action.

62 & 63 Vic. c. 43, § 36.

**Affidavits, before whom sworn. Courts, etc. to take judicial notice of seals, signatures, etc. 37.** Any affidavit, affirmation, or declaration required to be sworn or made under the provisions or for the purposes of this Act, may be sworn or made, in Manitoba, before the liquidator, or before any notary public, commissioner for taking affidavits, or justice of the peace; and out of Manitoba, before any Judge of a Court of Record, any commissioner for taking affidavits to be used in any Court in Canada, any notary public, the chief municipal officer for any town or city, any British consul or vice-consul, or any person authorized by or under any statute of the Dominion or of this Province to take affidavits; a) All Courts, Judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal, or stamp or signature (as the case may be) of such Court, Judge, notary public, commissioner, justice, chief municipal officer, consul, vice-consul, liquidator or other person, attached, appended or subscribed to such affidavit, affirmation or declaration, or to any other document to be used for the purposes of this Act.

62 & 63 Vic. c. 37.

#### *Dissolution of company.*

**Account of winding up to be made by liquidator to a general meeting. Return of holding of meeting to be sent to Provincial Secretary. Dissolution of company. 38.** As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which the winding-up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators; the meeting shall be called by advertisement, specifying the time, place, and object of such meeting; and the advertisement shall be published one month at least previously thereto: a) The liquidator shall make a return to the Provincial Secretary of such meeting having been held, and of the date at which the same was held; which return shall be filed in the office of the Provincial Secretary; and on the expiration of three months from the date of the filing of such return, the company shall be deemed to be dissolved.

62 & 63 Vic. c. 43, § 38.

**Order for dissolution. Report to Provincial Secretary. 39.** Or whenever the affairs of the company have been completely wound up, the Court may make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly; which order shall be reported by the liquidator to the Provincial Secretary.

62 & 63 Vic. c. 43, § 39.

**Penalty on default in reporting by liquidator or in making return. 40.** If the liquidator makes default in transmitting to the Provincial Secretary the return



mentioned in the thirty-eighth section of this Act, or in reporting the order (if any) declaring the company dissolved, he shall be liable to a penalty not exceeding twenty dollars for every day during which he is in default.

62 & 63 Vic. c. 43, § 40.

**Disposition of unclaimed dividends. 41.** All dividends deposited in a bank and remaining unclaimed at the time of the dissolution of the company shall be left for three years in the bank where they are deposited, and, if still unclaimed, shall then be paid over by such bank, with interest accrued thereon, to the Treasurer of Manitoba, and, if afterwards duly claimed, shall be paid over to the persons entitled thereto.

62 & 63 Vic. c. 43, § 41.

**Deposit by liquidator after dissolution of moneys with sworn statement. Penalty on omission. Money to remain on deposit for three years. Disposal of books etc., after winding-up. After five years responsibility as to custody of books, etc., to cease. 42.** Every liquidator shall, within thirty days after the date of the dissolution of the company, deposit in the bank appointed or named as hereinbefore provided for any other money belonging to the estate then in his hands not required for any other purpose authorized by this Act, with a sworn statement and account of such money, and that the same is all he has in his hands; and he shall be subject to a penalty not exceeding ten dollars for every day on which he neglects or delays such payment; and he shall be a debtor to His Majesty for such money and may be compelled as such to account for and pay over the same: a) The money so deposited shall be left for three years in the bank, and shall be then paid over, with interest, to the Treasurer of the Province, and if afterwards claimed shall be paid over to the person entitled thereto; b) Where a company has been wound up under this Act and is about to be dissolved, the books, accounts, and documents of the company and of the liquidators may be disposed of in such a way as the company by an extraordinary resolution directs; c) After the lapse of five years from the date of such dissolution no responsibility shall rest on the company or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them are not forthcoming to any party claiming to be interested therein.

62 & 63 Vic. c. 43, § 42.

#### *Rules to carry out Act.*

**Judges to make rules and forms as to proceedings and costs, etc. Allowance or disallowance by Lieutenant-Governor-in-Council. Practice till allowance of rules, etc. 43.** The Court of King's Bench, or any three of the Judges thereof, may, from time to time, make and frame and settle the forms, rules, and regulations to be followed and observed in proceedings under this Act, and may make rules as to the costs, fees, and charges which shall or may be had, taken, or paid in all such cases by or to solicitors or counsel, and by or to officers of Courts, whether for the officers or for the Crown, and by or to sheriffs or other persons whom it may be necessary to provide for, or for any service performed or work done under this Act: a) The said Judges, or any three of them, shall under their hands certify all rules and forms made under this Act to the Lieutenant-Governor-in-Council, who may approve of, disallow or amend any such rules or forms; and the rules and forms so approved of (with or without amendment, as the case may be) shall have the same force and effect as if they had been made and included in this Act; b) Until such forms, rules, and regulations are so approved, and subject to any which may be approved, the practice under this Act shall, in cases not hereinbefore provided for, be the same (as nearly as may be) as under *The Winding-up Act*, being chapter one hundred and twenty-nine of the Revised Statutes of Canada, or any Act or Acts amending the same or substituted therefor, and the rules of the said Court made thereunder or applicable thereto.

62 & 63 Vic. c. 43, § 43. The Dominion Winding-up Act, now R. S. C. 1906, c. 144, is reprinted *supra*.

#### *Distribution of assets or reduction of capital.*

**Application of following sections. 44.** The following sections of this Act shall apply to every company whose incorporation is under the authority of the Legislature of Manitoba, where the shareholders or members of the company are entitled to the profits of the business of such company.

62 & 63 Vic. c. 43, § 44.

**Authority given by special resolution. 45.** Where a company has passed a special resolution authorizing any of the acts hereinafter allowed, the directors and officers may act in accordance with the terms of such resolution, subject to the following provisions of this Act.

62 & 63 Vic. c. 43, § 45.

**Resolution for distribution of assets or reduction of capital. 46.** The company may by such resolution direct that proceedings be taken to distribute the proceeds of all the assets of the company amongst the shareholders after payment of the debts of the company: a) Or may, by such resolution, direct that proceedings be taken to reduce the capital; i) Either by paying off the shares of such persons as may elect to be paid off at a rate fixed by the resolution, or to be determined in accordance with a plan therein specified; ii) Or by paying off a certain fixed proportion of all the shares; b) This section shall not apply to a company the capital of which is not divided into shares.

62 & 63 Vic. c. 43, § 46.

**Notice of resolution. 47.** The company shall thereupon give notice of the resolution, in the form in Schedule A to this Act, in *The Manitoba Gazette*, and in some newspaper published in the City of Winnipeg, and in some other newspaper published where the chief place of business of the company in Manitoba is situate if any newspaper is published in such place: a) The notice shall also state that after some day to be therein named, and which shall not be earlier than three months from the first publication of the notice in the *Gazette*, the company will act upon the resolution; b) The notice shall also call upon all creditors of the company to file their claims against the company forthwith, whether such claims are or are not then due; c) Where the company has no place of business in Manitoba, or its chief place of business is in Winnipeg, it will be sufficient if the notice is published in *The Manitoba Gazette* and in one Winnipeg newspaper; d) The notice shall be published in *The Manitoba Gazette* and in each of the said newspapers (where publication in more than one is required) at least six times during the said period of three months, and in computing such six times no two publications which occur in the same week shall be counted.

62 & 63 Vic. c. 43, § 47.

**When resolution may be carried into effect. 48.** Upon the arrival of the day appointed, or so soon thereafter as conveniently may be, the officers of the company may act in accordance with the terms of the resolution; provided (a) either that the company has no creditors, and a statement in the form in Schedule B to this Act upon the oath or solemn affirmation of the chief executive officer and of the treasurer of the company, stating their belief of this fact, is filed in the office of the prot onotary or deputy clerk of the Crown and pleas for the judicial district in which the chief office of the company is situated; b) Or the consent of the company's creditors to the resolution being acted upon has been procured in writing, and a statement under oath or solemn affirmation of the said officers, containing the particulars set forth in Schedule C to this Act, is filed in this office.

62 & 63 Vic. c. 43, § 48.

**Liability of officers for payments improperly made under resolution. 49.** No officer of such company shall make or authorize any payment by virtue of such resolution until one or other of the said statements has been filed as aforesaid, or without the consent of every creditor of the company, so long as to his knowledge any debt, whether the same is due or not, or any accrued liability of the company, remains unsatisfied; and any officer who violates the provisions of this section shall, besides being subject to such criminal punishment as is authorized for his offence, be liable personally for the amount of such unsatisfied claim or accrued liability to the creditor or other person entitled to claim from the company.

62 & 63 Vic. c. 43, § 49

**Liability of shareholders for moneys received under resolution. 50.** Every shareholder receiving moneys under such resolution shall, to the extent of the moneys so received, remain liable for any debts or liabilities of the company then in fact existing; and upon the winding-up of the company by judicial process, every such person, his executors or administrators may be required to contribute to that extent towards the payment of such debts or liabilities after the other assets of the company have been exhausted; but no executor or administrator shall be held so



liable unless at the time he receives notice of the assessment he has in his hands assets applicable thereto or subsequently receives such assets.

62 & 63 Vic. c. 43, § 50.

**Restriction on insurance companies, etc. 51.** No insurance or guarantee company, or other company carrying on business of a like nature, shall pay off any part of its capital stock under this Act until every policy, and every instrument having the effect of a policy, given by the company has expired or been terminated; and in the case of such a company, this fact shall be stated in the statement in Schedule B or C to this Act filed as aforesaid.

62 & 63 Vic. c. 43, § 51.

**Resolution to reduce par value of shares not to affect amount payable on such shares. 52.** Where the capital of a company has become impaired, and the shareholders pass a special resolution to reduce the par value of the shares of the company, the shares shall thereupon be reduced in accordance with the terms of the resolution, provided that the resolution shall not in any wise affect the amount still remaining payable upon the shares; but the same amount shall, except as to a double or other additional liability, continue to be payable in respect of every share as if such resolution had not been passed; and in case, by virtue of the charter or Act of incorporation of the company or of any general or other Act affecting the same, a double or other additional liability is cast upon the shareholders, the same proportionate liability shall continue, that is to say, if the liability was a double liability, the shareholders shall, as to new creditors, be liable for double the amount of the stock at its reduced value, and in like manner for any other proportion, but in respect of persons who are creditors at the time of the reduction, the liability of the shareholders shall continue as if such reduction had not taken place.

62 & 63 Vic. c. 43, § 52.

**Notice of reduction of par value of shares. 53.** Where a reduction is had under the preceding section, a notice thereof in the form in Schedule D to this Act shall be published at least once a week for six weeks in the manner hereinbefore provided in the forty-seventh section of this Act.

62 & 63 Vic. c. 43, § 53.

**Where capital reduced advertisements of company to state same as reduced. 54.** Where a company, acting under the provisions of this Act, has reduced its capital, every advertisement, circular, or other document thereafter issued by the company, or any of its officers, containing a statement of the capital of the company, shall state such capital at the amount to which it has been reduced.

62 & 63 Vic. c. 43, § 54.

### *Schedules.*

The following are the schedules referred to in this Act:

#### *Schedule A.*

Notice is hereby given that the (*insert name of company*) has, by a special resolution passed by the shareholders of the said company, resolved to (*set out the substance of the resolution*).

The company will act upon the said resolution upon the \_\_\_\_\_ day of \_\_\_\_\_ next.

All creditors of the company are hereby required to file their claims against the company forthwith, whether or not such claims are now due.

A. B.  
Secretary.

Date, etc.

#### *Schedule B.*

(*First Method.*)

I, A. B., of the \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_, make oath and say (*or solemnly affirm, as the case may require*).

1. I am the (*here insert title of office*) of the (*name of company*), and I am the chief executive officer of the said company, and, as such officer, have the supervision and management of the business of the said company.

2. I verily believe the said company is not indebted to any person or persons, or to any company, association or corporation whatsoever, and I verily believe that no person, company, association or corporation has any right of action whatever against the said (*name of company*).

(In the case of insurance or guarantee companies, or other company carrying on business of a like nature, the following paragraph is to be added:)

3. Every policy, and every instrument having the effect of a policy, given by the said company, has expired or been terminated.

Sworn, etc.

N. B. The statement by the treasurer of the company is to be identical with the above, except as to the paragraph setting forth the office held.

### Schedule C.

(Second Method.)

I, C. D., of the                      in the                      of                      , make oath and say (or solemnly affirm, as the case may require).

1. I am the (here insert title of office) of the (name of company), and I am the chief executive officer of the said company, and, as such officer, have the management and supervision of the business of the said company.

2. I verily believe that the said company is not indebted to any person or persons, or to any company, association or corporation whatsoever, except those whose names appear in the schedule which is hereto annexed, and every such person, company, and association has consented, in writing, to the following resolution being acted upon, that is to say (here set out the resolution).

3. I verily believe that no person, company, association, or corporation, except such as are named in the said schedule, has any right of action whatever against the said company.

(In the case of insurance or guarantee companies, or other company carrying on business of a like nature, the following paragraph is to be added:)

4. Every policy, and every instrument having the effect of a policy, given by the said company, has expired or been terminated.

Sworn, etc.

N. B. The statement by the treasurer of the company is to be identical with the above, except as to the paragraph setting forth the office held.

### Schedule D.

Notice is hereby given that the (name of company) has, by special resolution passed by the shareholders of the said company, reduced the capital of the company from \$                      to \$                      , and has reduced the par value of each share of the said company from \$                      to                      .

Date, etc.

A. B.,

Secretary.

## Sale of Goods.

### a) R. S. M. 1902, c. 152. An Act relating to the Sale of Goods.

(This chapter is identical in all material respects with the Imperial Sale of Goods Act, 1893 (56 & 57 Vic. c. 71). The Act applies to sales of goods of the value of \$ 50.00 and upwards, instead of £10 and upwards. The doctrine of market overt does not apply.)

Growing wild hay sold to a person who is to cut and remove it is "goods" within the meaning of the Act. — *Fredkin v. Glines*, (1909), 18 Man. 249. A contract to put up a building with frame for a tent "according to plans for \$ 500.00," is a contract of sale of a chattel, at least under circumstances where the person supplying the labour and materials pulls down and carries away the structure without the sanction of the other party. — *Ross v. Doyle*, (1887), 4 Man. 434. Where goods are placed in a warehouse or elevator, nominally on storage, but giving to the person to whom the goods are delivered the right to mix them up with goods of a similar character, and where under the terms of the agreement the party delivering the goods can only require an equivalent amount of the same kind and quality, the contract is one of sale and not of bailment, as the property in the goods passes to the warehouseman. — *Lawlor v. Nicol*, (1898), 12 Man. 224. Goods were ordered through a representative of the plaintiff. On 12th December plaintiff wrote defendant that he would consign only, not sell. This letter was never received, but defendant received a telegram as follows: "Can only fill order forty off hardware, forty and ten flatware. You pay express. Answer if satisfactory," to which defendant replied: "All right; send goods at once." The goods were shipped on 16th December, and at the same time plaintiff wrote defendant that the goods were consigned only, and not sold, but this letter was not mailed until the 18th, and not received until after the goods had been received and accepted. The invoice was headed "Consigned" to the defendant. It was held that the transaction was a sale,



and that the property vested in the defendant. — *Aeme Silver Co. v. Perret*, (1887), 4 Man. 501. Where goods are held by a warehouseman, an assignment or order for delivery does not pass the property in the goods until the warehouseman has assented to hold the same as agent of the purchaser. — *Jones v. Henderson*, (1885), 3 Man. 433. Where the purchase price has not been paid in full, but has been secured by the giving of promissory notes, damages can be recovered for a breach of warranty. — *Cook v. Thomas*, (1889), 6 Man. 286. *Semble*, the doctrine of caveat emptor may apply although there has been a breach of a statutory duty by the seller. — *Rothwell v. Milner*, (1892), 8 Man. 472. *Cp. Nickle v. Harris*, (1910), 14 W. L. R. 515. Where the contract is an entirety the seller can not recover for part of the goods sent, unless the buyer has by his conduct precluded himself from setting up the breach of contract. — *McPhail v. Clements*, (1884), 1 Man. 165. As to what constitutes a sufficient appropriation, see *Bernhart v. McCutcheon*, (1899), 12 Man. 394; *Haverson v. Smith*, (1906), 16 Man. 204. Under the circumstances a buyer justified in refusing to accept goods. — *Schweiger v. Vineberg*, (1909), 12 West. L. R. 515. An express warranty in a contract for the sale of goods by description does not exclude the implied warranty that the goods shall correspond with the description. On the sale of a threshing engine by description there is an implied warranty that it shall be reasonably fit for the work for which the seller knew that the buyer wanted it. — *Northwest Thresher Co. v. Darrell*, (1906), 15 Man. 553. Where the seller fills an order for goods with the provision specially written in it by his agent that the goods are to be satisfactory to the purchasers he thereby waives any limitation of the authority of his agent as to giving warranties, even though the contract contains a printed form of warranty as to the fitness of the goods and a provision that the agent of the seller may not "add to, abridge, or change" the warranty in any manner. — *New Hamburg Mfg. Co. v. Shields*, (1907), 16 Man. 212. Where an engine was sold under a warranty that it was in first-class repair and in good running order, and the buyer discovered certain defects before he started using the machine and other defects almost immediately thereafter, but, instead of proceeding at once to have the missing parts supplied, continued to operate the machine in its defective condition without complaining to the seller of anything but the friction, it was held that there could be no recovery for damage, which might have been prevented by reasonable efforts on the defendant's part. The measure of the buyer's damage is the amount that it would have cost to put the engine in the condition it was warranted to be in, plus his loss of profits or from delays during the time that would necessarily elapse before these repairs could be made had he acted promptly after discovery. — *Mawhinney v. Porteous*, (1908), 17 Man. 184. Where a sale is made subject to delivery, any loss occasioned by deterioration in transit not necessarily incident to the course of transit must be borne by the seller. — *Winnipeg Fish Co. v. Shipman Fish Co.*, (1909), 41 S. C. R. 453, reversing s. c., (1908), 17 Man. 620. Where an article is returned by the buyer with a statement of his inability to pay for it, and is accepted by the seller and kept for a long period of time, and where there are circumstances where the seller had tried to sell the article during this period, it will be regarded as an accord and satisfaction, even though the buyer stated that he would buy back the article in the future should his circumstances become such as to warrant it. — *Boyce v. Soames*, (1907), 16 Man. 109.

## **b) 1909, c. 60. An Act to regulate the Purchase, Sale, and Transfer of Stocks of Goods in Bulk (10th March, 1909).**

**Short title.** 1. This Act may be cited as the *Bulk Sales Act, 1909*.

**Purchaser of stock of goods in bulk to demand and vendor to furnish statement showing particulars of all debts over \$ 50, verified by statutory declaration. Form of statement.** 2. It shall be the duty of every person who shall bargain for, buy or purchase any stock of goods, wares, or merchandise in bulk, for cash or on credit, before closing the purchase of the same, and before paying to the vendor any part of the purchase price, or giving any promissory note or notes or any security for the said purchase price, to demand of and receive from such vendor, and it shall be the duty of each vendor of such goods to furnish a written statement, verified by the statutory declaration of the vendor or his duly authorized agent, or, if the vendor is a corporation, by the declaration of the president, vice-president, secretary-treasurer, or manager of such corporation, which statement is to contain the names and addresses of all the creditors of the said vendor for amounts exceeding \$ 50, together with the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable, by said vendor to each of said creditors, which said statement may be in the form set forth in Schedule A hereto.

**If such statutory declaration not demanded and furnished, sale deemed fraudulent and shall be void as against the creditors of the vendor. Unless proceeds applied in payment of debts.** 3. [As amended by Acts, 1911, c. 52, § 1.] Whenever any person shall bargain for or purchase any stock of goods, wares, or merchan-

dise in bulk, for cash or on credit, and shall pay any part of the purchase price or execute or deliver to the vendor or to his order, or to any person for his use, any promissory note or other document for or on account of the purchase price of said goods, or any part thereof, without first having demanded and obtained from the vendor, or from his agent, a statutory declaration purporting to be such as is provided for in the preceding section of this Act, then such sale shall be deemed to be fraudulent and shall be absolutely void as against the creditors of the vendor, unless all of the creditors of the vendor are paid in full out of the proceeds of such sale.

**Duty of purchaser in such case. Distribution of money. Fees of trust company.** 4. [As amended by Acts, 1911, c. 52, §§ 2, 3.] Any such purchaser, upon obtaining such statutory declaration, shall either obtain the written waiver from the creditors of the vendor hereinafter referred to, or shall pay the whole of his purchase money or deliver his promissory note or notes or other documents securing the same, or part thereof, into the hands of a trust company or an official assignee, for distribution pro rata among the creditors of the said vendor, subject to any preferences provided for by law or by previous contract. Such distribution shall be made in like manner as moneys are distributed by an official assignee under *The Assignments Act*, and in making such distribution the claims of the creditors shall be subject to the same provisions as are contained in sections 23 to 33, both inclusive, of *The Assignments Act*. The fees of any such trust company or official assignee shall not exceed 3 per cent. of the total proceeds of such sale which shall come to its or his hands, and shall, together with any disbursements, be paid by being deducted out of the moneys to be received by the said creditors and shall in no event be charged to the debtor; provided further that from and after the furnishing of such declaration no preference or priority shall be obtainable by any creditor by attachment or garnishing process or otherwise. a) Provided, however, that if the purchase price to be paid is less than the amount of the total indebtedness of the vendor to his creditors, as shown by the said written statement, the purchaser must obtain the written consent to such bargain or purchase from creditors representing at least sixty per cent in number and amount of the claims against such vendor as shown by said written statement and any sale for such purchase price without such written consent shall be fraudulent and void against the creditors of the vendor.

**Consequence if purchaser fails to carry out requirements of Act.** 5. [As amended by Acts, 1911, c. 52, § 2.] If such purchaser, upon receiving such statutory declaration, shall fail to observe the requirements of the last preceding section without obtaining the written waiver from creditors hereinafter referred to, then such sale shall be deemed to be fraudulent and shall be absolutely void as against the creditors of the vendor, unless all creditors of the vendor are paid in full out of the proceeds of such sale.

**What to be deemed "a sale in bulk." If waiver from creditors produced, Act shall not apply.** 6. [As amended by Acts, 1911, c. 52, § 5.] Any sale or transfer of a stock of goods, wares, or merchandise, or part thereof, out of the usual course of business or trade of the vendor, or whenever substantially the entire stock-in-trade of the vendor shall be sold or conveyed, or whenever an interest in the business or trade of the vendor is sold or conveyed, or attempted to be sold and conveyed, such sale, transfer, or conveyance shall be deemed "a sale in bulk" within the meaning of this Act; provided, however, that if the vendor produces and delivers to the vendee a written waiver of the provisions of this Act from his creditors, representing sixty per cent. in number and value of the claims as shown by said statutory declaration, then the provisions of this Act shall not apply.

**Only sales by traders and merchants affected.** 7. This Act shall only apply to sales by traders and merchants defined as follows: a) Persons who as their ostensible occupation buy and sell goods, wares, and merchandise, ordinarily the subject of trade and commerce; b) Commission merchants; c) Manufacturers.

**Certain sales in bulk not affected.** 8. Nothing in this Act contained shall apply to or affect any sale by executors, administrators, receivers, assignees for the benefit of creditors, or any public official acting under judicial process.

**When Act in force.** 9. This Act shall come into force on the 1st day of September, 1909.



*Schedule A.*

Statement showing names and addresses of all creditors of .....  
of ..... for amounts exceeding the sum of fifty dollars.

Name of creditors.	Post office address.	Nature of indebtedness.	Amount.	When due.

*Statutory declaration.*

I, ....., of ..... in the Province of Manitoba, do solemnly declare that the above is a true and correct statement of the names and addresses of all ..... creditors for amounts exceeding fifty dollars, and shows correctly the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by ..... to each of said creditors. (*If the declaration is made by an agent add, I am the duly authorized agent of the vendor and have a personal knowledge of the matters herein declared to.*)

*Or if the vendor is a corporation—*

If, ..... of ..... in the Province of Manitoba, do solemnly declare that the above is a true and correct statement of the names and addresses of all the creditors of the ..... Company for amounts exceeding fifty dollars, and shows correctly the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by such Company to each of said creditors, and that I am the ..... of the said Company, and have a personal knowledge of the matters herein declared to.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of *The Canada Evidence Act*.

Declared before me at the .....  
..... of .....  
..... in the Province of Manitoba,  
this ..... day of .....  
A.D. 190 .

A Commissioner in B. R., etc.

**c) 1911, c. 52. An Act to amend the Bulk Sales Act, 1909  
(24th March, 1911).**

[1—5. Amend Acts, 1909, c. 60, and are there incorporated.]

**Act not retroactive. 6.** This Act shall not apply to any sale heretofore made or to distribution of moneys thereunder.

**Commencement. 7.** This Act shall come into force on the day it is assented to.

**Assignments.**

**a) R. S. M. 1902. An Act respecting Assignments and Preferences by Insolvent Persons.<sup>1)</sup>**

*Short title.*

**Short title. 1.** This Act may be cited as *The Assignments Act*.

1 & 2 Edw. 7, c. 2, § 42.

*Official assignees.*

**Appointment of official assignee. 2.** The Lieutenant-Governor-in-Council may appoint one person in each judicial district of this Province to be an official assignee under this Act.

1 & 2 Edw. 7, c. 2, § 1.

<sup>1)</sup> Incorporating the amendments effected by Acts, 1907, c. 1; 1909, c. 1.

**Security to be given by official assignee. 3.** No official assignee shall accept any assignment or trust, or execute any duties under this Act, unless and until he has given security to the satisfaction of the Lieutenant-Governor-in-Council, by bond or bonds or otherwise, to His Majesty, His heirs and successors, in the sum of ten thousand dollars for the due accounting and payment over of all moneys received by him as such assignee.

1 & 2 Edw. 7, c. 2, § 40.

**Expense of furnishing bond. 4.** An official assignee may charge up to each estate which comes into his hands the sum of five dollars to re-imburse himself the expense incident to the furnishing of said bonds.

1 & 2 Edw. 7, c. 2, § 41.

#### *Assignments.*

**General assignment not in accordance with Act, when void. 5.** Every assignment for the general benefit of creditors which is not void under any of the sections of this Act numbered from thirty-eight to forty-two inclusive of both such numbers, but is not made to an official assignee, nor to any other person with the consent of the proportion of creditors prescribed by the forty-fourth section of this Act, shall be absolutely null and void to all intents and purposes.

1 & 2 Edw. 7, c. 2, § 3 (3).

**Form of assignment for general benefit of creditors. 6.** Every assignment made under this Act for the general benefit of creditors shall be valid and sufficient if it is in the words following, that is to say: "All my personal property and all my real estate, credits, and effects, which may be seized and sold under execution," or if it is in words to the like effect; and an assignment so expressed shall vest in the assignee all the real and personal estate, rights, property, credits, and effects, whether vested or contingent, belonging at the time of the assignment to the assignor, except such as are by law exempt from seizure or sale under execution or other legal proceedings, subject, however, as regards lands, to the provisions of *The Registry Act*, and *The Real Property Act* as to the registration of the assignment.

1 & 2 Edw. 7, c. 2, § 5.

**All assignments for general benefit of creditors to be subject to this Act. 7.** Every assignment hereafter executed in accordance with this Act for the general benefit of creditors, whether the assignment is or is not expressed to be made under or in pursuance of this Act, and whether the debtor has or has not included all his real and personal estate, shall vest the estate, whether real or personal or partly real and partly personal, thereby assigned in the assignee therein named for the general benefit of creditors, and such assignment and the property thereby assigned shall be subject to all the provisions of this Act, and the provisions of this Act shall apply to the assignee named in such assignment.

1 & 2 Edw. 7, c. 2, § 6.

**Assignments to take precedence of judgments, executions, etc. 8.** An assignment for the general benefit of creditors under this Act shall take precedence of all attachments of debts by way of garnishment where the money has not been actually paid over to the garnishing creditor, as well as of all other attachments and of all judgments and registered certificates of judgments and of all executions not completely executed by payment, subject to the lien, if any, of execution or attaching creditors for their costs.

1 & 2 Edw. 7, c. 2, § 11.

**Sheriff to hand over property seized. 9.** In case a deed of assignment as aforesaid has been duly executed and registered, the sheriff or bailiff of a County Court having seized property of the assignor under execution or attachment shall, upon receiving a copy of the assignment, duly certified by the clerk of the County Court in the office of which it is registered, forthwith deliver to the assignee all the estate and effects of the execution debtor in his hands, upon payment by the assignee to the sheriff or bailiff of his fees and charges and the costs of the execution creditor or creditors who has or have a lien as above provided. If the sheriff or bailiff has sold the debtor's estate or any part thereof, he shall deliver to the assignee the moneys so realized by him, less his fees and the said execution creditor's costs. The assignee shall have the same power to enforce a return and the same remedies for failure or neglect to return that an execution creditor has under *The Kings Bench Act*, or *The County Courts Act*, or otherwise.

58 & 59 Vic. c. 6, r. 695a.



**Amendment of assignment by Judge. 10.** No advantage shall be taken or gained by any creditor of any mistake, defect, or imperfection in any assignment under this Act for the general benefit of creditors, if the same can be amended or corrected; and any such mistake, defect, or imperfection shall be amended by any Judge of the Court of King's Bench or of the County Court in the office of which it is registered or by this Act required to be registered. Such amendment may be made on application of the assignee or of any creditor of the assignor, on such notice being given to other parties concerned, as the Judge shall think reasonable; and the amendment, when made, shall have relation back to the date of the assignment, but so as not to prejudice the rights of innocent purchasers.

1 & 2 Edw. 7, c. 2, § 12.

**Notice of assignment to be published. 11.** No assignment made for the general benefit of creditors under this Act shall be within the operation of *The Bills of Sale and Chattel Mortgage Act*, but a notice of the assignment shall, as soon as conveniently possible, be published at least once in *The Manitoba Gazette* and not less than twice in at least one newspaper having a general circulation in the judicial district in which the property assigned is situate.

1 & 2 Edw. 7, c. 2, § 13 (1).

**Assignment to be registered. 12.** A counterpart or copy of every such assignment shall also, within ten days from the execution thereof, be registered (together with an affidavit of a witness thereto of the due execution of such counterpart or of the assignment of which the copy filed purports to be a copy) in the office of the clerk of the County Court of the judicial division where the assignor, if a resident in Manitoba, resides at the time of the execution thereof, or if he is not a resident, then in the office of the clerk of the County Court of the judicial division where the personal property so assigned is or where the principal part thereof (in case the assignment includes property in more judicial divisions than one) is at the time of the execution of such assignment; and such clerks shall file all such instruments presented to them respectively for that purpose and shall endorse thereon the time of receiving the same in their respective offices, and the same shall be kept there for the inspection of all persons interested therein. The said clerks respectively shall number and enter such assignments, and be entitled to the same fees for services in the same manner as if such assignments had been registered under *The Bills of Sale and Chattel Mortgage Act*.

1 & 2 Edw. 7, c. 2, § 13 (2).

**Penalty for neglecting publication or registration. Liability of official assignee. 13.** If the said notice is not published in the regular number of *The Manitoba Gazette* and in such newspaper as aforesaid within ten days from the execution of the assignment by the assignor, or if the assignment is not registered as aforesaid within ten days from the execution thereof, the assignor shall be liable to a penalty of twenty-five dollars for each and every day which shall pass after the issue of the number of the newspaper in which the notice should have appeared until the same shall have been published; and a like penalty for each and every day which shall pass after the expiration of ten days from the execution of the assignment by the assignor until the same shall have been registered: a) The assignee shall be subject to a like penalty for any such delay for each and every day which shall pass after the expiration of ten days from the delivery of the assignment to him, or of ten days after his assent thereto. The burden of proving the time of such delivery or assent shall be upon the assignee; b) Such penalties may be recovered summarily with costs before any Judge of the Court of King's Bench, and one-half of the penalty shall go to the party suing and the other half for the benefit of the estate of the assignor; c) In case of an assignment to an official assignee, he shall not be liable for any of the penalties imposed in this section unless he has been paid or tendered the cost of advertising and registering the assignment a reasonable time before the time required for so advertising and registering, nor shall he be compelled to act under the assignment until his costs in that behalf are paid or tendered to him.

1 & 2 Edw. 7, c. 2, § 14.

**Compelling publication and registration. 14.** In case the assignment is not registered and notice thereof published within the time hereinbefore prescribed, an application may be made by anyone interested in the assignment to a Judge of the Court of King's Bench to compel the registration of the assignment and publication of such notice; and the Judge shall make his order in that behalf, and with

or without costs, or upon the payment of costs by such person as he may in his discretion direct to pay the same.

1 & 2 Edw. 7, c. 2, § 15.

**Assignment not invalidated by omission to publish, etc.** 15. The omission to publish or register as aforesaid, or any irregularity in the publication or registration, shall not invalidate the assignment.

1 & 2 Edw. 7, c. 2, § 16.

*Creditors' assignees.*

**Appointment of substituted assignee.** 16. A majority in number and value of the creditors who have proved claims to the amount of one hundred dollars or upwards may at their discretion substitute any other person for the assignee to whom an assignment has been made.

1 & 2 Edw. 7, c. 2, § 8 (1).

**Rights and duties of the substituted assignee.** 17. Where a new assignee is substituted or appointed as in the last preceding section provided, the estate shall forthwith vest in the new or additional assignee, without a conveyance or transfer, and he shall register an affidavit of his appointment in the office in which the original assignment was filed. Such an affidavit may also be registered under *The Registry Act* or filed under *The Real Property Act*, and such registration or filing shall have the same effect as the registration of a conveyance or filing of a transfer.

1 & 2 Edw. 7, c. 2, § 8 (2).

*Meetings of creditors.*

**Assignee to call meeting of creditors.** 18. It shall be the duty of the assignee immediately to inform himself, by reference to the debtor and his records of account, of the names and residences of the debtor's creditors, and, within five days from the date of assignment, to convene a meeting of the creditors for the appointment of inspectors and the giving of directions with reference to the disposal of the estate, by mailing prepaid and registered to every creditor known to him a circular calling a meeting of creditors to be held in his office, or some other convenient place to be named in the notices, not later than twelve days after the mailing of such notice; and he shall also publish such notice by advertisement in *The Manitoba Gazette* in the first issue after the expiration of such period of five days.

1 & 2 Edw. 7, c. 2, § 17.

**Meeting of creditors by request of majority thereof.** 19. In case of a request in writing signed by a majority of the creditors having claims duly proved of one hundred dollars and upwards, computed according to the provisions of the twenty-second section of this Act, it shall be the duty of the assignee, within two days after receiving such request, to call a meeting of the creditors at a time not later than twelve days after the assignee receives the request. In case of default, the assignee shall be liable to a penalty of twenty-five dollars for every day after the expiration of the time limited for the calling of the meeting until the meeting is called.

1 & 2 Edw. 7, c. 2, § 18 (1).

**Judge to give directions in case creditors do not attend.** 20. In case a sufficient number of creditors do not attend the meeting mentioned in the last preceding section, or fail to give directions with reference with<sup>1)</sup> the disposal of the estate, any of the Judges aforesaid may give all necessary directions in that behalf.

1 & 2 Edw. 7, c. 2, § 18 (2).

**Voting at meeting.** 21. At any meeting of creditors the creditors may vote in person, or by proxy authorized in writing; but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim, stating the amount and nature thereof.

1 & 2 Edw. 7, c. 2, § 19.

**Scale of votes. Claims acquired after assignment. Casting vote.** 22. Subject to the provisions of the sixteenth and twentieth sections hereof, all questions discussed at meetings of creditors shall be decided by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows: For every claim of or over one hundred dollars, and less than two hundred dollars, one vote. For every claim of or over two hundred dollars, and less than five hundred dollars, two votes. For every claim of or over five hundred dollars, and less than one thousand dollars, three votes. For every additional one thousand dollars, or fraction thereof, one vote: a) No person shall be entitled to vote on a claim acquired after the assign-

<sup>1)</sup> See, obviously "to".



ment unless the entire claim is acquired, but this shall not apply to persons acquiring notes, bills or other securities upon which they are liable; b) In case of a tie the assignee, or, if there are two assignees, then the assignee nominated for that purpose by creditors (or by the Judge if none has been nominated by the creditors), shall have a casting vote.

1 & 2 Edw. 7, c. 2, § 20 (1-3).

*Creditors' claims.*

**Proof of claim. 23.** Every person claiming to be entitled to rank on the estate assigned shall furnish to the assignee particulars of his claim, proved by affidavit and such vouchers as the nature of the case admits of.

1 & 2 Edw. 7, c. 2, § 21 (1).

**Limiting time for proof of claim. Not to interfere with Trustee Act. 24.** In case a person claiming to be entitled to rank on the estate assigned does not, within a reasonable time after receiving notice of the assignment and of the name and address of the assignee, furnish to the assignee satisfactory proofs of his claim, as provided by this and the preceding sections of this Act, a Judge of the Court of King's Bench may, upon a summary application by the assignee or by any other person interested in the debtor's estate (of which application at least three days' notice shall be given to the person alleged to have made default in proving a claim as aforesaid), order that, unless the claim be proved to the satisfaction of the Judge within a time to be limited by the order, the person so making default shall no longer be deemed a creditor of the estate assigned, and shall be wholly barred of any right to share in the proceeds thereof; and, if the claim is not so proved within the time so limited, or within such further time as the said Judge may by subsequent order allow, the same shall be wholly barred, and the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the debtor therefor. a) This section is not intended to interfere with the protection afforded to assignees by the fortieth and forty-first sections of *The Manitoba Trustee Act*.

1 & 2 Edw. 7, c. 2, § 21 (2, 3).

**Creditor may prove claim not due. 25.** A person whose claim has not accrued due shall nevertheless be entitled to prove under the assignment and vote at meetings of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time which has to run until the claim becomes due.

1 & 2 Edw. 7, c. 2, § 21 (4).

**Set-off. 26.** The law of set-off shall apply to all claims made against the estate and also to all actions instituted by the assignee for the recovery of debts due to the assignor, in the same manner and to the same extent as if the assignor were plaintiff or defendant, as the case may be, except in so far as any claim for set-off shall be affected by the provisions respecting frauds or fraudulent preferences of this or any other Act.

1 & 2 Edw. 7, c. 2, § 26.

**How claims are to rank where different estates. 27.** If any assignor or assignors executing an assignment under this Act for the general benefit of his or their creditors owes or owed debts both individually and as a member of different co-partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other or others after all the creditors of such other estate or estates have been paid in full.

1 & 2 Edw. 7, c. 2, § 7.

**Workmen's wages not exceeding three months privileged claims under assignment for benefit of creditors. Provisions applicable to all wages. 28.** [As amended by Acts, 1909, c. 1, § 1.] In case of an assignment under this Act, the assignee shall pay, in priority to the claims of the ordinary or general creditors of the person making the same, the wages or salary of all persons in the employ of such person at the time of the making of such assignment, or within one month before the making thereof, not exceeding three months' wages or salary, such wages or salary to be for arrears only and not for any unearned portion, and such persons shall be entitled to rank as ordinary or general creditors for the residue, if any, of their claims for arrears of such wages or salary. The provisions of this section shall apply to wages or salary, whether the employment in respect of which the same may be payable be by the day, week, month or year, or by the hour or other period of time.

1 & 2 Edw. 7, c. 2, § 4, 9 Edw. 7, c. 1. — a) Where any employer has entered into a contract with any insurers, in respect of any liability under this Act to any workman, then in

the event of the employer becoming insolvent or making an assignment for the benefit of, or a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies, and be subject to the same liabilities, as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer; b) If the liability aforesaid of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the assignment or liquidation proceedings; c) There shall be included among the debts which, under *The Assignments Act* and *The Joint Stock Companies Winding-Up Act*, are in the distribution of the property in the case of an assignment, and in the distribution of the assets of a company being wound up, under the said Acts respectively, to be paid in priority to all other debts, the amount, not exceeding in any individual case five hundred dollars, due in respect of any compensation the liability for which accrued before the date of the assignment or the date of the commencement of the winding-up, and the said Acts shall have effect accordingly. When the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the first Schedule to this Act; d) The provisions of the foregoing sub-section with respect to the preferences and priorities shall not apply where the assignor or insolvent or the company being wound up has entered into such a contract with insurers as aforesaid; e) This section shall not apply where a company is wound up voluntarily merely for the purpose of reconstruction or amalgamation with another company. — Acts 1910, c. 81, § 8.

**Creditors to value securities. 29.** Every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof; and if such security is on the estate of the debtor, or on the estate of a third party for whom such debtor is only secondarily liable, he shall put a specified value thereon; and the assignee, under the authority of the creditors, may either consent to the right of the creditor to rank for the claim after deducting such valuation, or he may require from the creditor an assignment of the security at an advance of ten per cent. upon the specified value to be paid out of the estate; and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect of the estate.

1 & 2 Edw. 7, c. 2, § 20 (4).

**Right to re-value in certain cases. 30.** If a creditor holds a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable, and which is not mature and exigible, such creditor shall be considered to hold security within the meaning of the last preceding section, and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof; but after the maturity of such liability and its non-payment he shall be entitled to amend and re-value his claim.

1 & 2 Edw. 7, c. 2, § 20 (5).

**When creditor holding security fails to value same. 31.** In case a person claiming to be entitled to rank on the estate assigned holds security for his claim or any part thereof, of such a nature that he is required by this Act to value the same, and he fails to value such security, a Judge of the Court of King's Bench may, upon summary application by the assignee or by any other person interested in the debtor's estate, of which application three days' notice shall be given to such claimant, order that, unless a specified value shall be placed on such security and notified in writing to the assignee within a time to be limited by the order, such claimant shall, in respect of the claim or the part thereof for which the security is held, in case the security is held for part only of the claim, be wholly barred of any right to share in the proceeds of such estate; and if a specified value is not placed on such security, and notified in writing to the assignee according to the exigency of the said order, or within such further time as the said Judge may by subsequent order allow, the said claim or the said part, as the case may be, shall be wholly barred as against such estate, but without prejudice to the liability of the debtor therefor.

1 & 2 Edw. 7, c. 2, § 20 (6).

**Contestation of claim. Service of process on solicitors. 32.** At any time after the assignee receives from any person claiming to be entitled to rank on the estate proof of his claim, notice of contestation of the claim may be served by the assignee upon the claimant. Within thirty days after the receipt of the notice, or such further time as a Judge of the Court of King's Bench may on application allow, an action



shall be brought by the claimant against the assignee to establish the claim, and a copy of the statement of claim in the action, or summons in case the action is brought in a County Court, shall be served on the assignee; and, in default of such action being brought and statement of claim or summons served within the time aforesaid, the claim to rank on the estate shall be forever barred. a) The notice by the assignee shall contain the name and place of business of one of the solicitors of the Court of King's Bench for Manitoba, upon whom service of the statement of claim or summons may be made; and service upon such solicitor shall be deemed sufficient service of the statement of claim or summons.

1 & 2 Edw. 7, c. 2, § 22.

**Procedure where assignee is satisfied with proof of claim and debtor desires to dispute same.** 33. In case the assignee is satisfied with the proof adduced in support of a claim, but the debtor disputes the same, such debtor shall do so by notice in writing to the assignee, stating the grounds upon which he disputes the claim; and such notice shall be given within ten days of such debtor being notified in writing by the assignee that he is satisfied with the proof adduced as aforesaid, and not afterwards unless by special leave of a Judge of the Court of King's Bench. a) If upon receiving such notice of dispute the assignee does not deem it proper to require the claimant to bring an action to establish his claim, he shall notify the debtor in writing of this fact, and the debtor may thereupon, and within ten days of his receiving such notice, apply to the said Judge for an order requiring the assignee to serve a notice of contestation. The Judge shall only make such order if, after notice to the assignee, the Judge is of opinion that there are good grounds for contesting the claim. In case the debtor does not make an application as aforesaid, the decision of the assignee shall as against him be final and conclusive so far as regards the distribution of the assigned estate. b) If upon the application the claimant consents in writing, the Judge may, in a summary manner, decide the question of the validity of the claim. c) If an action is brought by the claimant against the assignee, the debtor may intervene at the trial, either personally or by counsel, for the purpose of calling and examining or cross-examining witnesses.

1 & 2 Edw. 7, c. 2, § 23.

#### *Dividends.*

**Dividends, when to be paid.** 34. As large a dividend as can with safety be paid shall be paid by every assignee under this Act within six months from the date of any assignment made hereunder, and earlier if required by the inspectors; and thereafter a further dividend shall be paid every six months, and more frequently if required by the inspectors, until the estate is wound up and disposed of.

1 & 2 Edw. 7, c. 2, § 28.

**Notice of dividend sheet.** 35. So soon as a dividend sheet is prepared, notice thereof shall be given by letter posted to each creditor, inclosing an abstract of receipts and disbursements, showing what interest has been received by the assignee for moneys in his hands, together with a copy of the dividend sheet, noting thereon the claims objected to, and stating whether any reservation has or has not been made therefor; and, after the expiry of eight days from the day of mailing such notice, abstract, and dividend sheet as aforesaid, dividends on all claims not objected to within that period shall be paid.

1 & 2 Edw. 7, c. 2, § 29.

#### *Administration of estate.*

**Assets not to be removed out of the Province, and moneys to be deposited in a bank. Penalty. Application of section limited.** 36. No property or assets of an estate assigned under the provisions of this Act shall be removed out of the Province without the order of a Judge of the Court of King's Bench; and the proceeds of the sale of any such property or assets and all moneys received on account of any estate shall be deposited by the assignee in one of the incorporated banks within this Province, and shall not be withdrawn or removed without the order of such Judge, except in payment of dividends and other charges incidental to the winding-up of the estate, which shall include rent, wages, mortgages, secured and preferred and partly secured and preferred claims. a) Any assignee or other person acting in his stead or on his behalf violating the provisions of this section shall be liable to a penalty of five hundred dollars, which may be recovered summarily with costs before any of the Judges aforesaid, and one-half of the said penalty shall go to the person suing therefor, and the other half shall belong to the said estate; but, in de-

fault of payment of the said penalty and all costs which may be incurred in any action or proceeding for the recovery thereof, such assignee or other person may be imprisoned for any period not exceeding thirty days, and shall be disqualified from acting as assignee of any estate while such default continues. b) This section shall not apply to any assignment executed before the first day of March in the year one thousand nine hundred and two, or to any proceedings thereunder.

1 & 2 Edw. 7. c. 2, § 24.

**Accounts to be kept accessible. 37.** Upon the expiration of one month from the first meeting of creditors, or as soon as may be after the expiration of such period, and afterwards from time to time at intervals of not more than three months, the assignee shall prepare, and keep constantly accessible to the creditors, accounts and statements of his doings as such assignee, and of the position of the estate.

1 & 2 Edw. 7. c. 2, § 25.

*Fraudulent or preferential transfers.*

**Gifts, transfers, etc., made by insolvents which defeat or prejudice creditors to be void. 38.** Subject to the provisions of the forty-fourth, forty-fifth, forty-sixth, and forty-seventh sections of this Act, every gift, conveyance, assignment, or transfer, delivery over or payment of goods, chattels, or effects, or of bills, bonds, notes, or securities, or of shares, dividends, premiums, or bonus in any bank, company, or corporation, or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, with intent to defeat, hinder, delay, or prejudice his creditors, or any one or more of them, shall, as against the creditor or creditors injured, delayed, or prejudiced, be utterly void.

1 & 2 Edw. 7. c. 2, § 2 (1).

**Transfers with intent to prefer creditors. 39.** Subject to the provisions of the forty-fourth, forty-fifth, forty-sixth, and forty-seventh sections of this Act, every gift, conveyance, assignment, or transfer, delivery over or payment of goods, chattels, or effects, or of bills, bonds, notes, or securities, or of shares, dividends, premiums, or bonus in any bank, company, or corporation, or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, to or for a creditor, with intent to give such creditor preference over his other creditors, or over any one or more of them, shall, as against the creditor or creditors injured, delayed, prejudiced, or postponed, be utterly void.

1 & 2 Edw. 7. c. 2, § 2 (2).

**Transfers having effect of preference void, if attacked within sixty days. 40.** Subject to the provisions of the forty-fourth, forty-fifth, forty-sixth, and forty-seventh sections of this Act, every such gift, conveyance, assignment, or transfer, delivery over, or payment as aforesaid, made to or for a creditor by a person at any time when he is in insolvent circumstances, or is unable to pay his debts in full or knows that he is on the eve of insolvency, and which has the effect of giving such creditor a preference over the other creditors of the debtor, or over one or more of them, shall, in and with respect to any action or proceedings which, within sixty days thereafter, is brought, had, or taken to impeach or set aside such transaction, be utterly void as against the creditor or creditors injured, delayed, prejudiced, or postponed.

1 & 2 Edw. 7. c. 2, § 2 (3).

**Or if assignment made within sixty days. 41.** Subject to the provisions of the forty-fourth, forty-fifth, forty-sixth, and forty-seventh sections of this Act, every such gift, conveyance, assignment, or transfer, delivery over, or payment as aforesaid, made to or for a creditor by a person at any time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, and which has the effect of giving such creditor a preference over the other creditors of the debtor or over one or more of them, shall, if the debtor, within sixty days after the transaction, makes an assignment for the benefit of his creditors, be utterly void as against the assignee or any creditor authorized to take proceedings to avoid the same under the forty-eighth section hereof.

1 & 2 Edw. 7. c. 2, § 2 (4).

**What transactions to be deemed preferential. Intent or motive immaterial. Pressure or want of knowledge on part of creditor not to save the transaction. 42.** A transaction shall be deemed to be one which has the effect of giving a creditor a preference over other creditors within the meaning of the two last preceding sections, if by such



transaction a creditor is given or realizes, or is placed in a position to realize, payment, satisfaction or security for the debtor's indebtedness to him, or a portion thereof, greater proportionately than could be realized by or for the unsecured creditors generally of such debtor, or for the unsecured portion of his liabilities, out of the assets of the debtor left available and subject to judgment, execution, attachment or other process; and such effect shall not be deemed dependent upon the intent or motive of the debtor or upon the transaction being entered into voluntarily or under pressure; and no pressure by a creditor, or want of notice to the creditor alleged to have been so preferred of the debtor's circumstances, inability or knowledge as aforesaid, or of the effect of the transaction, shall avail to protect the transaction, except as provided by the forty-fourth and forty-seventh sections hereof.

1 & 2 Edw. 7. c. 2. § 2 (5).

**"Creditor" for certain purposes to include surety and indorser.** 43. When the word "creditor" or "creditors" occurs in any of the last four preceding sections, such word shall be deemed to include any surety and the indorser of any promissory note or bill of exchange who would, upon payment by him of the debt, promissory note, or bill of exchange, in respect of which such suretyship was entered into or such indorsement was given, become a creditor of the person giving the preference within the meaning of said subsections, and such word shall include a cestui que trust or other person to whom the liability is equitable only.

1 & 2 Edw. 7. c. 2. § 2 (6).

**Assignments for benefit of creditors and bona fide sales, etc., protected.** 44. Nothing in the last six preceding sections shall apply to any assignment made to an official assignee or, with the consent of a majority of the creditors having claims of one hundred dollars and upwards, computed according to the provisions of the twenty-second section of this Act, to any other person, for the purpose in each of the said cases of paying rateably and proportionately and without preference or priority all the creditors of the debtor their just debts; nor to any bona fide sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties; nor to any payment of money to a creditor, nor to any bona fide conveyance, assignment, transfer, or delivery over, of any goods, securities, or property of any kind, as above mentioned, which is made in consideration of any present actual bona fide payment in money, or by way of security for any present actual bona fide advance of money, or which is made in consideration of any present actual bona fide sale or delivery of goods or other property; provided that the money paid, or the goods or other property sold or delivered, bear a fair and reasonable relative value to the consideration therefor.

1 & 2 Edw. 7. c. 2. § 3 (1).

**Transfer to creditor of consideration for sale invalid.** 45. In case of a valid sale of goods, securities, or property, and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor, under circumstances which would render void such a payment or transfer by the debtor personally and directly, the payment or transfer, even though valid as respects the purchaser, shall be void as respects the creditor to whom the same is made.

1 & 2 Edw. 7. c. 2. § 3 (2).

**Security given up upon void payment to be returned.** 46. In case a payment has been made which is void under this Act, and any valuable security was given up in consideration of the payment, the creditor shall be entitled to have the security restored or its value made good to him before, or as a condition of the return of the payment.

1 & 2 Edw. 7. c. 2. § 3 (4).

**Payment of wages protected. Exchange of securities protected. Certain assignments to be valid.** 47. Nothing herein contained shall affect the priority of a claim for wages or salary under the twenty-eighth section of this Act, or shall prevent a debtor providing for payment of wages or salary due by him in accordance with the provisions of the said section. Nor shall anything herein contained affect any payment of money to a creditor where such creditor, by reason or on account of such payment, has lost or been deprived of or has in good faith given up any valid security which he held for the payment of the debt so paid, unless the value of the security is restored to the creditor, nor the substitution in good faith of one security for another security for the same debt, so far as the debtor's estate is not thereby lessened in value to the other creditors. Nor shall anything herein contained in-

validate a security given to a creditor for a pre-existing debt where, by reason or on account of the giving of the security, an advance in money is made to the debtor by the creditor in the bona fide belief that the advance will enable the debtor to continue his trade or business and to pay his debts in full.

1 & 2 Edw. 7, c. 2, § 3 (5).

**Rights of action of assignee. Creditor may proceed in certain cases, if assignee refuses. Creditors suing for rescission of void transactions for benefit of creditors generally. Delivery over and sale of property affected. Distribution of proceeds of property amongst creditors pro rata.** 48. Except as is hereinafter otherwise provided, the assignee shall have an exclusive right of suing for the rescission of agreements, deeds and instruments or other transactions made or entered into in fraud of creditors, or made or entered into in fraud of creditors, or made or entered into in violation of this Act. a) If at any time a creditor desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the estate, and the assignee, under the authority of the creditors or inspectors, refuses or neglects to take such proceeding, after being duly required so to do, the creditor shall have the right to obtain an order of a Judge of the Court of King's Bench authorizing him to take the proceedings in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the Judge may prescribe; and thereupon any benefit derived from the proceedings shall, to the extent of his claim and full costs, belong exclusively to the creditor instituting the same for his benefit; but if, before such order is granted, the assignee shall signify to the Judge his readiness to institute the proceedings for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, shall belong to the estate. b) Where there is no valid assignment for the benefit of creditors, one or more creditors may, for the benefit of creditors generally, or for the benefit of such creditors as have been injured, delayed, prejudiced, or postponed by the impeached transaction, sue for the rescission of or to have declared void agreements, deeds, instruments, or other transactions made or entered into in fraud of creditors or in violation of this Act or thereby declared void; and in case any amendment of the statement of claim be made, the same shall relate back to the commencement of the action for the purpose of the time limited by the fortieth section hereof. c) In any action under this section the Court may direct delivery of any property in question to the assignee or a sheriff or a receiver, and may order a sale thereof and such distribution of the proceeds as may seem equitable, either through the assignee or through a sheriff or receiver or otherwise as may seem proper. d) In case of a transaction void under this Act as entered into with intent to give a preference or having the effect of giving a preference, the subject matters shall not be seizable or attachable or liable to sale for the satisfaction, according to priorities otherwise prevailing, of judgments, attachments, or other process, except executions; but where not realized under execution so as to be distributable by a sheriff or bailiff among creditors, the Court shall have and exercise jurisdiction to realize the same for the benefit of all the creditors, and to distribute the proceeds among them rateably and proportionately.

1 & 2 Edw. 7, c. 2, § 9.

**Following proceeds of property fraudulently transferred. Taking proceeds under execution. Creditor suing on behalf of himself and other creditors. Protection of innocent purchasers.** 49. In the case of a gift, conveyance, assignment, or transfer of any property, real or personal, which in law is invalid against creditors, if the person to whom the gift, conveyance, assignment, or transfer was made shall have sold or disposed of, realized, or collected, the property or any part thereof, the money or other proceeds or the amount thereof, whether further disposed of or not, may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery, or payment was made, and such right to seize and recover shall belong, not only to an assignee for the general benefit of the creditors of the said debtor, but, in case there is no such assignment, shall exist in favour of all creditors of such debtor. a) Where there has been no valid assignment for the benefit of creditors, and the proceeds are of a character to be seizable under execution, they may be seized under the execution of any creditor, and shall be distributable rateably amongst the creditors under



*The Executions Act or The County Courts Act or otherwise.* b) Where there has been no valid assignment for the benefit of creditors, and whether the proceeds realized as aforesaid are or are not of a character to be seized under execution, an action may be brought therefore or to recover the amount thereof by a creditor (whether a judgment creditor or not) on behalf of himself and all other creditors, or such other proceedings may be taken as may be necessary to render the said proceeds or the amount thereof available for the general benefit of the creditors. c) This section shall not apply as against innocent purchasers of any such property.

1 & 2 Edw. 7, c. 2, § 10.

*Examination of assignors and others.*

**Examination of assignor or employees. 50.** (As amended by Acts, 1907, c. 1, § 1.) Where there has been an assignment for the benefit of creditors, the assignee or assignees, upon resolution passed by a majority vote of the creditors present or represented at a meeting of the creditors of the assignor regularly called, or upon the written request or resolution of the majority of the inspectors of the estate, may, without an order, examine the assignor or any person who is or has been an agent, clerk, servant, officer, or employee of any kind of the assignor, upon oath, before a master or local master or a special examiner of the Court of King's Bench, or before a deputy clerk of the Crown of the Court of King's Bench, or before the Judge of the County Court of the judicial division within which such assignor resides, or may, by the order of a Judge of any Court aforesaid, examine the assignor on oath before any other person to be specially named in such order, touching the estate and effects of the assignor, and as to the property and means he had when the earliest of the debts or liabilities of the assignor existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to or by him.

1 & 2 Edw. 7, c. 2, § 33; 6 & 7 Edw. 7, c. 1.

**Procedure upon examination of an assignor. 51.** The rules and procedure from time to time in force in the Court of King's Bench for the examination of judgment debtors shall, as far as may be, apply to an examination under this Act of an assignor in all respects as if the assignor were a judgment debtor.

1 & 2 Edw. 7, c. 2, § 34.

**When assignor does not attend or refuses to answer questions. 52.** In case such assignor does not attend as required by any appointment, or appointment and order, as the case may be, served on him, and does not allege a sufficient excuse for not attending, or, if attending, refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or, if it appears from such examination of the assignor that such assignor has concealed or made away with any part of his property in order to defeat or defraud his creditors or any of them, any Judge of any of the Courts aforesaid may order the assignor to be committed to the common gaol of the judicial district in which he resides for any term not exceeding twelve months.

1 & 2 Edw. 7, c. 2, § 35.

**Service of appointment. 53.** Any person liable to be examined under the fiftieth section of this Act may be served with an appointment signed by the Judge or officer mentioned in the fiftieth section of this Act, or a copy thereof, and, where the examination is to take place under an order, also with a copy of the order; such service to be made at least forty-eight hours before the time appointed for the examination; and the person to be examined is to be paid the same fees as a witness.

1 & 2 Edw. 7, c. 2, § 36 (1).

**Conduct of examination. 54.** The examination under the fiftieth section of this Act shall be conducted in the same manner as in the case of an oral examination of an opposite party, in a suit or action.

1 & 2 Edw. 7, c. 2, § 36 (2).

**Compelling attendance and production of books. 55.** Any person liable to be examined under the fiftieth section hereof may be compelled to attend and testify and to produce books and documents, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing

to disclose the matters in respect of which he may be examined, as in the case of a witness in an action in the Court of King's Bench.

1 & 2 Edw. 7, c. 2, § 37.

**Calling upon persons having information as to assignor's affairs to give evidence and produce documents, etc. Examination of person failing to produce documents or to deliver property. Enforcing attendance and production. 56.** In case any person has, or is believed or suspected to have, in his possession or power any of the assignor's property, or any book, document, or paper of any kind relating in whole or in part to the assignor, his dealings or property, such person may, upon resolution passed by a majority vote of the creditors present or represented at a regularly called meeting of the creditors of the assignor (exclusive of such person, if he is a creditor), or upon the written request or resolution of the majority of the inspectors of the estate, be required by the assignee to produce such books, documents, or papers for the information of such assignee, or to deliver over to him any such property of the debtor.

a) In case such person fails to produce the said book, document, or other paper, or to deliver over such property, within four days of his being served with a copy of the said resolution and a request of the assignee in that behalf, or in case the assignee or the majority of the inspectors is or are not satisfied that full production or delivery has been made, the assignee may, without an order, examine the said person before any of the officers mentioned in the fiftieth section of this Act touching any such property or document or other paper which he is supposed to have received.

b) Any such person may be compelled to attend and testify, and to produce upon his examination any book, document, or other paper which under this section he is liable to produce, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness in an action in the Court of King's Bench.

1 & 2 Edw. 7, c. 2, § 38.

#### *Remuneration of assignee and inspectors.*

**Remuneration of assignee. 57.** The assignee shall receive such remuneration as shall be voted to him by the creditors at any meeting called for the purpose after the first dividend sheet has been prepared, or by the inspectors in case of the creditors failing to provide therefor, subject to the review of a Judge of the Court of King's Bench if complained of by the assignee or any of the creditors.

1 & 2 Edw. 7, c. 2, § 30.

**Where remuneration not fixed before the final dividend. 58.** In case the remuneration of the assignee has not been fixed under the last preceding section before the final dividend, the assignee may insert in the final dividend sheet and retain as his remuneration a sum not exceeding five per cent. of the cash receipts, subject to review by a Judge as hereinbefore provided; but no application by the assignee to review the said allowance shall be entertained unless, previous to the preparation of the final dividend sheet, the question of his remuneration has been brought before a meeting of creditors competent to decide the same.

1 & 2 Edw. 7, c. 2, § 31.

**Remuneration of inspectors. 59.** The assignee may pay or allow to each inspector appointed under this Act a reasonable charge or sum for the due performance of his duties as such inspector, but no such payment or allowance to an inspector in any estate shall exceed the sum of twenty-five dollars.

1 & 2 Edw. 7, c. 2, § 32.

#### *Affidavits.*

**Affidavits. 60.** Any affidavit authorized or required under this Act may be sworn before any person authorized by *The Manitoba Evidence Act* to administer affidavits, or before a justice of the peace, or, if sworn out in Manitoba, before a notary public or other functionary authorized to administer oaths outside of this Province under any statute thereof.

1 & 2 Edw. 7, c. 2, § 27.



## IV. New Brunswick.

### Introduction.

#### Law in force.

New Brunswick formed a part of Nova Scotia until 1784, and consequently until that date the law of Nova Scotia was in force. This law continued in force after the separation, except that it is now provided that no law of the Nova Scotia legislature passed prior to the creation of the Province is in force<sup>1)</sup>. The law at present in force is the English common law as it existed at the time of the settlement, in so far as applicable to local conditions, except in so far as it has been modified by Imperial legislation extended to the Province, Dominion legislation, and Provincial Acts. As to the applicability of English statutes Clement says<sup>2)</sup>: "Although it is difficult to classify the New Brunswick authorities upon this question, in every case the Judges of the Courts there have exercised their best judgment as to the applicability of the Imperial statute to the circumstances of the Colony. If any distinction in principle can be drawn between the decisions in New Brunswick and those in Nova Scotia, it would appear to be this: that Imperial statutes have been denied operative force in Nova Scotia unless clearly applicable, while in New Brunswick the tendency, at least of earlier authorities, seems to have been not to reject them unless clearly inapplicable. At the same time it must be confessed that this distinction can not be clearly pointed out in every case<sup>3)</sup>."

### Statutes.<sup>4)</sup>

#### Application of Law.

#### Con. St. 1903, c. 1. Respecting the Form and Interpretation of Statutes.

**Acts of Nova Scotia legislature not in force here.** 3. No law of the Nova Scotia Legislature passed prior to the erection of the Province of New Brunswick shall have any force herein.

See section on Law in force, *supra*.

### Partnership.

#### Cons. St. 1903, c. 144. Respecting Partnerships.<sup>5)</sup>

[1—19. Relate to limited partnerships. Such a partnership may be formed by two or more persons, and may consist of one or more general partners, with full liability, and of a special partner or special partners without personal liability. The partners must sign and acknowledge a certificate of partnership, which must be registered in the office of the Registrar of Deeds in the county of the principal

<sup>1)</sup> Cons. Stat. 1903, c. 1, § 3, reprinted in full, *infra*. — <sup>2)</sup> *Canadian constitution*, p. 46. —

<sup>3)</sup> *Hazen v. Rector*, etc., (1879), 18 N. B. 479, (Statute of Mortmain, 9 Geo. 2, c. 36, not in force); *Hanington v. McFadden*, (1836), 2 N. B. 260, (Statute of Uses and Statute of Enrolments, 27 Hen. 8, c. 16, in force). — <sup>4)</sup> As in force 1st January, 1912. — <sup>5)</sup> As amended by Acts, 1906, c. 7. The law relating to general partnerships is not codified. Promises to answer for the debt of another to a firm or for the debt of a firm to another cease to be binding upon a change in the firm unless a contrary intention appears. — Cons. St. 1903, c. 140, § 3.

place of business. Where the business is carried on in several counties there must be a registration in each county. The certificate must state the firm name, the nature of the business, the names of the general and special partners, distinguishing between them, the amount of capital contributed by the special partners and the date when the partnership is to commence and when it is to terminate. The certificates must be published; certificates of withdrawal of partners, must be registered and published in the same manner. The name of a special partner must not form part of the firm name unless with the addition thereto of the words "Special partner," "limited partner," or words to the like effect. Capital contributed by a special partner must not be withdrawn, but he may receive interest thereon, or dividends, provided the firm capital is not thereby impaired. A special partner may loan money to the firm, and transact business on behalf of the firm, but such transactions are not binding upon the firm until approved by a general partner, or a majority of the general partners. But, except in this case, the special partner may not transact business on behalf of the firm or act as agent thereof, under pain of incurring the responsibility of a general partner. A special partner may lease premises to his firm. Actions arising out of transactions with the firm must be brought by or against the general partners only, except where the special partner has incurred the liability of a general partner. In the event of insolvency, the special partners, except in respect of loans made to the firm, may not rank as creditors, until the claims of other creditors are satisfied. Limited partnerships are dissolved by lapse of time or operation of law. If otherwise dissolved a notice thereof must be registered and published. Alterations in the nature of the business, or in the capital contributed by the special partners, or the death of any partner, general or special, works a dissolution of the firm, and must be registered and published.]

[20—30. Relate to the registration of general partnerships. All partnerships must be registered, as well as the dissolution or any change in the membership of a firm. Certificates are published in the *Royal Gazette*. A failure to comply with this requirement subjects the offender to a fine.]

### Companies.

#### a) Cons. St. 1903, c. 85. Respecting the Incorporation of Joint Stock Companies by Letters Patent.<sup>1)</sup>

[1—94. Five or more persons may incorporate under this Act for any object within the authority of the Provincial Legislature, except the operation and construction of railways, the business of insurance, or the management of trades unions, friendly societies, building societies, and similar associations. Except when the capital stock does not exceed \$ 5000, the applicants for letters patent must give two weeks' previous notice by publication in the *Royal Gazette* of their intention to apply for the same, stating in such application the proposed name, objects, head office, capital (which in the cases of trading companies must not be less than \$ 2000 actually subscribed), number and amount of shares, and the names and addresses of the applicants. The petition for letters patent must be presented not more than one month after the last publication of the notice. Such petition must, in addition to the facts recited in the notice, state the amount of stock taken by each applicant, and the amount, if any, paid in upon the stock of each applicant. The aggregate of the stock taken must be at least one-half of the total amount of stock of the company. The petition must also state whether such amount is paid in cash, or by the transfer of property, or how otherwise. Where the petition is not signed by all the shareholders whose names are proposed to be inserted in the letters patent, it must be accompanied by a memorandum of association, signed by all the persons whose names are to be inserted. Cash payments on account of stock must have been paid in to the credit of the company or of trustees therefor, and must be standing to such credit in some chartered bank in the Province. Companies may provide for the issue of preferred stock, giving to the holders priority as respects

<sup>1)</sup> As amended by Acts, 1904, c. 7, 1906, c. 18, 1907, c. 27, 1909, c. 25.



dividends, in the distribution of assets, or the election of directors. Where the issue of preferred stock is provided for by by-law, the by-law must be adopted unanimously by the shareholders present at a meeting convened for the purpose. Companies have power to acquire and hold real estate necessary for the corporate purposes. The name of a company may be changed, and by a two-thirds vote at a special general meeting held for the purpose the directors may be authorized to apply for supplementary letters patent extending the powers of the company. The board of directors must consist of not less than three members. Directors must be shareholders, and elected annually by ballot. The company may by a two-thirds vote alter the number of directors or the place of business of the company. The directors have the usual powers in regard to the administration of the affairs of the company, including the allotment of stock, calls, dividends, meetings, etc. By-laws authorizing the sale of unissued stock at a discount must be confirmed at an annual meeting or at a general meeting duly called for that purpose. Every share in a company is deemed to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless otherwise determined by a contract in writing filed with the Provincial Secretary at or before the issuing of the shares. But a subscription for shares by any applicant upon any application for incorporation filed by the grant of letters patent therefor is not deemed to constitute an issue of shares within this section. The contract of subscription may provide for the payment of shares by property or other valuable consideration. The court may grant relief in proper cases for a failure to comply with the provisions in reference to the filing of the contract. The prospectus of the company and every notice inviting persons to subscribe for shares must specify the date and names of the parties to the contract. The capital stock may be increased or decreased, provided the by-laws authorizing the same be confirmed by a two-thirds vote of the shareholders. Supplementary letters patent must be petitioned for confirming such by-law. The directors may make calls upon shares, subject to the provisions of the letters patent and the by-laws, but not less than ten per cent. upon the allotted stock must be called in within one year from the incorporation of the company. No share is transferable until all previous calls have been fully paid in; and the directors may decline to register a transfer of shares belonging to a member who is indebted to the company. Shares may be transferred by personal representatives. Shareholders in arrears in respect of calls are not entitled to vote. The company is not bound to see to the execution of any trust in respect of shares. Shareholders are liable to creditors for the unpaid balance on shares held by them. Dividends must not be paid out of capital. Where the profits of the company warrant the declaring of a dividend, but such earnings are invested so as to increase the value of the property of the company the company may, if authorized so to do by a vote of not less than two-thirds in value of the shareholders present in person or by proxy at any annual meeting or general meeting duly called for the purpose, issue scrip certificates in lieu of dividends. The company may deduct from the dividends payable to any member such sums of money as may be due from him to the company on account of calls or otherwise. Directors declaring and paying dividends when the company is insolvent, or where the company becomes insolvent by reason of such dividend, become jointly and severally liable as well to the company as to the individual shareholders and creditors thereof for all the debts of the company then existing and for all debts contracted during their continuance in office. A director may avoid such personal liability by protest duly made. Service of process on the company is effected by leaving the same at the office of the company or by service on the president or secretary thereof. Companies are forbidden to make loans to shareholders. In case a by-law authorizing the same is sanctioned by a vote of not less than two-thirds in value of the shareholders then present in person, or represented by proxy, at a special general meeting duly called for considering the by-law, the directors may borrow money upon the credit of the company, and issue bonds or debentures, and may sell, pledge, or hypothecate the same for any sum borrowed, or deposit the same as collateral security for any promissory note or over-draft of the company, at such prices and for such amounts, as may be deemed expedient or necessary, but no such debentures or bonds shall be for a less sum than one hundred dollars; and the directors may, under the like sanction, hypothecate or pledge the real or personal property of the company to secure any sums borrowed by the company, and may secure any bonds or debentures of the

company by the said real or personal property, or both; "provided always, that the amount to be borrowed, or for which such bonds or debentures may be pledged or hypothecated shall not at any time be greater than seventy-five per cent of the actual paid up stock; provided always, that the limitation and restrictions on the borrowing powers of the company contained in this section, shall not apply to or include moneys borrowed by the company on bills of exchange or promissory notes made, accepted, or endorsed by the company, or by over-draft, or otherwise than on the bonds or debentures of the company". Debentures may be issued or re-issued, pledged, etc., and may be cancelled and new debentures issued.]

### **b) Cons. St. 1903, c. 90. Respecting the Winding-up of Incorporated Companies.<sup>1)</sup>**

[1—26. This chapter is applicable to all companies heretofore or hereafter incorporated by the Province, and whose incorporation and affairs are subject to the legislative authority of the Province, but does not apply to railway companies nor to any company whose act of incorporation contains express provisions for the mode of winding-up such company. A company may be wound up by the Court: 1. Where the company at a general meeting has passed a special resolution, concurred in by a majority in number and value of the shareholders, requiring the company to be wound up; 2. whenever the company has forfeited its charter by non-user or otherwise or suspended its business for a whole year or become dissolved by effluxion of time; 3. where the event has occurred upon the occurrence of which it is provided that the company is to be dissolved; 4. when the capital stock is impaired to the extent of twenty-five per cent., although the company is solvent within the meaning of the Dominion Winding-up Act; 5. when the Court is of opinion that it is just and equitable that the company be wound up. An application for the winding-up of the company may be made by or on behalf of any contributory and shall be verified by affidavit or other sufficient evidence. Notice of the intended presentation of the petition must be served on the company and advertised in the *Royal Gazette* and in some newspaper published in the county in which the chief place of business of the company is situated. Upon hearing the petition the Court may make an order for the winding-up of the company, which order must be forthwith published in the *Royal Gazette*, fixing a day for the appointment of a curator to such company, and requiring the creditors and members of such company to appear before the Court on such day to give their advice as to such appointment. The curator is appointed by the Court and must give security for the due performance of his duties. Upon the completion of such security the estate of the company vests in the curator. The curator must give twelve days' notice of his appointment and of the order for winding-up in the *Royal Gazette* and must in such notice call upon all persons indebted to the company to pay up and all creditors to file with him their claims against the company, verified by oath. Such claims must be filed within three months, and the dividends declared from time to time are paid to those creditors whose accounts have been filed at the time mentioned in such notice. Other creditors may file their claims, but are only entitled to the dividends thereafter ordered, unless on the final distribution there are sufficient assets to pay all the liabilities and the expenses of the winding-up. After the appointment of the curator all suits against the company are stayed unless the court orders otherwise. Transfers of shares or other interest in the company made after the appointment of the curator are invalid. No transfer of any share or claim in any company made by any shareholder or contributory within three months next before the application for the winding-up can relieve any shareholder or contributory from liability to the company or its curator for calls which may be made by orders of the court for unpaid stock or for which, by virtue of the charter or act of incorporation the transferor would have been liable had he not transferred the same. Calls on unpaid stock may be made by order of the Court and the curator may recover the amount of such call by an action of debt. The curator must as soon as possible convert the moveable assets of the company into money.

<sup>1)</sup> As amended by Acts, 1909, c. 26, and 1910, c. 25.



The immoveable property may be sold by the curator when so ordered by the Court. The curator must file a semi-annual statement of assets in his hands and of claims filed with him. Whenever the amount of moneys realized from the assets of any company shall appear to the Court to warrant a dividend the Court must make an order for such dividend. If there is any surplus from the funds realized from the assets of any company after the payment of all creditors in full such surplus must be devoted first to the adjustment of the rights of contributories among themselves, and afterwards must be distributed pro rata among the contributories. The Court may at any time make calls on the contributories to the extent of their respective liabilities in so far as necessary to specify the debts of the company and the expenses of the winding-up, and in making such calls may take into consideration the probability of some assets not then collected being realized and some liabilities not then ascertained becoming debts. Contributories are not entitled to set off any claims against the company against unpaid balances of stock, unless such set-off has been allowed and credited to them on the books of the company on account of such unpaid balance previous to the application for the order to wind up. The curator is entitled to such salary or remuneration by way of percentage or otherwise as the Court may direct. When the affairs of the company have been completely wound up the Court must make an order declaring the company to be dissolved from the date of such order and thereupon the company is deemed dissolved<sup>1)</sup>].

### Sale of Goods.

[The law relating to the sale of goods is not codified. Contracts for the sale of goods for the price of \$ 40, or upwards must be in writing<sup>2)</sup>].

### Assignments and Creditors' Relief.

#### a) Cons. St. 1903, c. 141. Respecting Assignments and Preferences by Insolvent Persons.<sup>3)</sup>

[1—33. Confessions of judgment, cognovits actionem, gifts and conveyances, etc., made by a person in insolvent circumstances, or knowing himself to be on the eve of insolvency, voluntarily or by collusion to defeat or delay creditors, or to give any preferences are void as against creditors. Where the effect of the transaction is to give a preference to a creditor, if the same is impeached within sixty days, it will be presumed to have been made with that intent, whether made voluntarily or under pressure. The Act does not apply to assignments made for the purpose of paying rateably and proportionately, and without preference or priority, all the creditors, nor to bona fide sales or payments in the course of trade to innocent parties, nor to the payment of money to a creditor, nor to transfers made in consideration of any present actual bona fide transfer in payment, or by way of security for any present actual bona fide advance of money, provided that the consideration is fair and reasonable. Where an assignor owes debts both individually and as a member of a partnership the claims rank first upon the estate by which the debts they represent were contracted, and only rank upon the other after all the creditors of that other have been paid in full. A majority in number and value of the creditors who have proved claims to the amount of \$ 100 or upwards may change the assignee, and an assignee may also be removed and another substituted, or an additional assignee appointed by the Court. The assignee may sue for the rescission of contracts made in fraud of creditors. Assignments are not within the *Bills of Sale Act*, but a notice thereof must be published; but the validity of an assignment is not affected by omission to publish. The assignee must convene a meet-

<sup>1)</sup> Employees of a company are entitled to a priority in respect of three months' wages or salary. — Cons. St. 1903, c. 149. — <sup>2)</sup> Cons. St. 1903, c. 140, § 4. — <sup>3)</sup> As amended by Acts, 1911, c. 40.

ing of creditors, and must call meetings upon the written demand of the majority of creditors who have proved claims of \$ 100 or upwards. The estate is to be disposed of by tender or public auction, unless the creditors otherwise order. Where the Court so orders, the assignee may continue the business. Creditors may vote at meetings in person or by proxy. Votes are calculated on the basis of one vote for each \$ 100 of claims. Secured creditors must value their security. Notice to file claim must be published in the *Royal Gazette*, and claims must be filed within three months of the date of such notice, unless the Court extends such time. Creditors not proving within the time allowed lose the right to participate in the distribution of the assets; but without prejudice to the liability of the debtor therefor. Creditors who have unaccrued claims may prove them, deducting interest. The doctrine of set-off applies. The assignor may be examined and be required to produce books and documents.]

### **b) Cons. St. 1903, c. 129. Respecting Non-Priority among Execution Creditors.<sup>1)</sup>**

[1—41. The purpose of this act is to prevent creditors from obtaining priority by execution, and to secure a rateable division of assets.]

## **V. North-West Territories.**

### **Law in force.**

The law of England relating to civil and criminal matters as the same existed on 15th July, 1870, is in force, in so far as applicable and in so far as it has not been amended or repealed by any Imperial or Dominion Act applicable to the Territories or by local Ordinances. Dominion Acts unless inapplicable are in force, and the Governor in Council may by Proclamation extend any Dominion Act or part thereof not then in force in the Territories to the same<sup>2)</sup>.

### **Statutes.<sup>3)</sup>**

### **Application of Law.**

### **R. S. C. 1906, c. 62. An Act respecting the North-West Territories.**

**Laws of England. 12.** Subject to the provisions of this Act the laws of England relating to civil and criminal matters, as the same existed on the fifteenth day of July, in the year one thousand eight hundred and seventy, shall be in force in the Territories, in so far as the same are applicable to the Territories, and in so far as the same have not been, or are not hereafter, as regards the Territories, repealed, altered, varied, modified, or affected by any Act of the Parliament of the United Kingdom or of the Parliament of Canada, applicable to the Territories, or by any Ordinance of the Territories.

**Laws and Ordinances in force continued. 13.** All laws and Ordinances in force in the Territories, and not inconsistent with this Act, or repealed by the operation of the Act passed in the third year of His Majesty's reign, chapter sixty-one, and intituled "An Act respecting the Revised Statutes of Canada," shall remain in force until it is otherwise provided or ordered by the Parliament of Canada, or by the Governor in Council or the Commissioner in Council.

<sup>1)</sup> As amended by Acts, 1909, c. 30, and 1910, c. 27. — <sup>2)</sup> R. S. C. 1906, c. 62, §§ 12—15, reprinted in full, *in/ra*. — <sup>3)</sup> As in force 1st May, 1911. There has been no local legislation since 1905.



**Application of Acts of Canada.** 14. Every Act of the Parliament of Canada, except in so far as otherwise provided in any such Act, and except in so far as the same is, by its terms, applicable only to one or more of the Provinces of Canada, or is, for any reason inapplicable to the Territories, shall, subject to the provisions of this Act, apply to and be in force in the Territories.

**Governor in Council may extend Acts to Territories.** 15. The Governor in Council may by proclamation, from time to time, direct that any Act of the Parliament of Canada, or any part or parts thereof, or any one or more of the sections of any one or more of any such Acts, not then in force in the Territories, shall be in force in the Territories generally, or in any part or parts thereof mentioned in such proclamation.

## Ordinances relating to Commercial Matters.

The law relating to partnership, companies, sale of goods, factors, and assignments is codified. With the exception of the Ordinance relating to preferential assignments, the Ordinances of the North-West Territories relating to the topics above named form the basis of the statutes of Alberta and Saskatchewan. The law is essentially similar to the law in force in those Provinces.

## VI. Nova Scotia.

### Law in force.

Nova Scotia is regarded as a Colony acquired by settlement by the English, although originally discovered and settled by the French. The law of England is recognized as in force, in so far as applicable to local conditions. There is some doubt as to the extent to which English statute law is applicable. In the leading case, *Uniacke v. Dickson*<sup>1</sup>), Halliburton, C. J., says: "To what extent the laws of the mother country prevail in the colonies settled by her descendants is a question which has occasioned much discussion, without producing any rule approaching to precision for our guidance. . . Among the colonists themselves there has generally existed a strong disposition to draw a distinction between the common and the statute law. As a code, they have been disposed to adopt the whole of the former, with the exception of such parts only as were obviously inconsistent with their new situation; whilst, far from being inclined to adopt the whole body of the statute law, they thought that such parts of them only were in force among them as were obviously applicable to, and necessary for, them. As it respects the common law, any exclusion formed the exception; whereas, in the statute law, the reception formed the exception. . . We must hold it to be quite clear that an English statute is applicable and necessary for us before we decide that it is in force here<sup>2</sup>)."

<sup>1</sup>) (1848), 2 N. S. 287. — <sup>2</sup>) "Upon a review of the Nova Scotia decisions it appears that the admission of Imperial Statutes has been the exception; those which have been held to be in force being, in the main, statutes in amelioration of the rigours of the common law, acts in curtailment of prerogative, or in enlargement of the liberty of the subject. To a greater extent than has been the case in either New Brunswick or Ontario, the judges of Nova Scotia have deemed it the office of legislation rather than of judicial decision to bring into operation within the Province the provision of Imperial statutes not originally capable of being made operative, but which might be thought suitable to the changed circumstances of the Colony." — Clement, *Canadian constitution* (2d ed.) p. 45. See also the following cases holding certain English statutes in force. — *Meisner v. Fanning*, (1842), 3 N. S. 97, (Magna Charta and Charters of Henry III.); *Wheelock v. McKown*, (1835), 1 N. S. 41 (statutes relating to land grants); *Shey v. Chisholm*, (1853), 2 N. S. 52 (Statute of Uses); *Doane v. McKenny*, (1854), 2 N. S. 328 (Acts Henry VIII. relating to partition between joint tenants and tenants in common); *The Dart* (1812), Stew. 304 (Statute of Staples); *Tarrant v. Sawyer*, (1835), 1 N. S. 46; *Moore v. Moore* (1880), 1 N. S. 525; *Graham v. Bell* (1884), 17 N. S. 90 (all relating to Statutes of Elizabeth against fraudulent conveyances). Certain statutes have been held not to be in force: *Berry v. Berry*, (1882), 16 N. S. 66 (Statute of Enrolments); *Regina v. Burdell*, (1861), 5 N. S. 126. (*jury de medietate lingue*); *Regina v. Porter*, (1887), 20 N. S. 352 (13 Geo. 2, c. 18).

## Statutes.<sup>1)</sup>

### Partnership.

#### a) Acts, 1911, c. 1. An Act respecting the Law of Partnership (31st March, 1911).

(This Act is identical in all material respects with the Imperial *Partnership Act, 1890*, (53 & 54 Vic. c. 39).

A communion of profit and loss of a business between two parties constitutes a partnership as to that business. — *Bank of Nova Scotia v. Haliburton*, (1855), 2 N. S. 350. Where three persons enter into a contract to perform certain work as partners, and one partner is excluded from all participation in the work, the person so excluded may recover, by way of damages, the profits that might reasonably be expected to result from the undertaking. — *Grant v. Creelman*, (1856), 3 N. S. 37. A stipulation in a partnership agreement providing that "it shall be lawful for the said E. H. to terminate the same at the end of the first year without any notice if the business shall not prove satisfactory to him," gives to such person an uncontrolled discretion and entitles him to dissolve the partnership at the end of the period named. — *Whitehead v. Howard*, (1876), 11 N. S. 423. It is not necessary that all the partners should contribute money or in equal proportions in order that they should share equally the profits and loss. — *The Herkimer*, (1804), Stew. 17. A partner is not entitled to remuneration for his services in winding-up the business of the firm. — *Butler v. Butler*, (1896) 29 N. S. 145. The acknowledgment in reference to a debt due by the firm of one partner made after the partnership has been dissolved is sufficient to prevent the operation of the Statute of Limitations. — *Bank of Nova Scotia v. Haliburton*, (1855), 2 N. S. 350. As to the authority of a partner to bind his co-partners under a warrant to confess judgment, see *Pitfield v. Oakes*, (1893), 25 N. S. 116. As to partner's liability for sums misappropriated by the firm, where he shared in the misappropriation, see *McSweeney v. Wallace*, (1870), 8 N. S. 83; see also *Silver v. Silver*, (1870), Russ. Eq. 169. A member of a partnership who assents to the giving of an acceptance in the firm name for a private debt is bound thereby and is not entitled to be regarded as a surety who can be discharged under the ordinary rules governing the contract of suretyship. — *Pitfield v. Trotter*, (1899), 32 N. S. 125. A separate debt due by one member of a firm in his individual capacity can not be set off against a joint debt due to the firm. — *Lordly v. Beckwith*, (1865), 5 N. S. 632. The members of a foreign firm can not be sued in the Nova Scotia Courts in the firm name, as such action would involve the assumption of personal jurisdiction over non-residents, but a foreign firm may sue in the firm name. — *Knauth Nachod v. Stern*, (1897), 30 N. S. 251.

#### b) Rev. St. 1900, c. 143. Of the Registration of Partnerships.

##### *Necessity for registration.*

**Declaration of partnership to be registered. Provisions in respect to absent members.** 1. 1. All persons associated in partnership for trading, manufacturing, or mining purposes, shall file in the registry of deeds for the registration district in which they carry on or intend to carry on business a declaration in writing signed by the several members of such partnership. 2. If at the time of making such declaration any member of such partnership is absent from the place at which such partnership carries on or intends to carry on business, such declaration shall be signed by the members present, in their own names, and also in the name of any such absent member, under a special authority to that effect, and such special authority shall be annexed to the declaration and filed therewith in the registry of deeds.

R. S., c. 83, § 1.

**Declaration for absent partners may be by agent.** 2. If the persons so associated are resident out of the Province, and are doing business in the Province by an attorney, agent, or other representative, such declaration may be signed by such attorney, agent, or other representative, under special authority of the persons so associated. The execution of such special authority shall be verified on oath before a notary public and certified by him, and such special authority shall be annexed to the declaration and filed therewith in the registry of deeds, and in such case the form of the declaration shall be modified accordingly.

R. S., c. 83, §§ 2, 8.

<sup>1)</sup> As in force, 1st January, 1912.



**Requisites of declaration. 3.** Such declaration shall be in the form or to the effect of form "A" in the Schedule to this Chapter, and shall contain the name, surname, addition, and residence of each member of such partnership, and the name, style, or firm under which such partnership carries on or intends to carry on such business, and shall state the time during which the partnership has existed, and that the persons therein named are the only members thereof.

R. S., c. 83, § 3.

**Time of filing. 4.** Such declaration shall be filed within three months next after the formation of such partnership.

R. S., c. 83, § 4.

**New declaration on change in partnership. 5.** Whenever any change or alteration takes place in the membership of such partnership, or in the name, style, or firm under which it intends to carry on business, or in the place of residence of any member of such partnership, a new declaration shall be filed in such registry of deeds, stating such change, and signed by all the members of such partnership as it is constituted after such change.

R. S., c. 83, § 5.

**Declaration of dissolution of partnership. 6.** Upon the dissolution of any partnership, any or all of the persons who composed such partnership may sign a declaration stating such dissolution. Such declaration may be in the form "B" in the Schedule to this Chapter.

R. S., c. 83, § 8.

**Person using firm name to file declaration. Requisites in such case. Persons out of Province may declare by agent. Time for filing. 7.** 1. Every person who is engaged in business for trading, manufacturing, or mining purposes, and who is not associated in partnership with any other person or persons, but uses as his business style some name or designation other than his own name, or who in such style uses his own name with the addition of "and company," or some other word or phrase indicating a plurality of members in the firm, shall file in the registry of deeds for the registration district in which he carries on or intends to carry on business, a declaration in writing signed by him. 2. Such declaration shall contain the name, surname, addition, and residence of the person making the same, and the firm name or style under which he carries on or intends to carry on business, and shall also state that no other person is associated with him in partnership. 3. If such person resides out of the Province and carries on business by an agent, attorney, or other representative in the Province, such declaration may be made by such agent, attorney, or representative, under special authority, which shall be verified on oath before a notary public and certified by him, and annexed to the declaration and filed therewith, and in such case the declaration shall also state the place of residence or business of such person without the Province, giving the street and number thereof if any. 4. Such declaration shall be filed within three months from the date when such firm name or style was first used.

R. S., c. 83, §§ 10, 11, 12.

**Allegation in declaration not to be controverted in certain cases. 8.** 1. No allegation contained in any such declaration shall be controverted by any person who, either by himself or his specially authorized attorney, agent, or representative, signed such declaration. 2. Except as against the other members of the partnership in any such declaration mentioned, no allegation in such declaration contained shall be controverted by any person who was a member of such partnership at the time such declaration was made, but who has not signed the same.

R. S., c. 83, § 6.

**Signer of declaration deemed to continue partner until new declaration filed. 9.** Every person who has made and filed such a declaration shall be deemed to continue a partner as in such declaration stated, until the filing of a new declaration signed by himself, or by his partners, or by the attorney, agent, or other representative of a non-resident partner, as in this Chapter provided.

R. S., c. 83, § 7.

**Chapter not to exempt from other liabilities. 10.** Nothing in this Chapter contained shall exempt from liability any person who, being a partner, fails to declare the same as already provided, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or such partners may be sued alone, and if judgment is recovered against them, any other partner

or partners may be sued jointly or severally, in an action on the original cause of action upon which such judgment was obtained; nor shall anything in this Chapter be construed to affect the rights of any partners with regard to each other, except that no such declaration as aforesaid shall be controverted by any signer thereof.

R. S., c. 83, § 7.

**Action, how brought if no declaration filed. Judgment, how enforced. All parties to instrument in writing to be joined. 11.** 1. If any persons are associated as partners for the purpose of trade or other business, and no declaration is filed under this Chapter with regard to such partnership, any action which might be brought against all the members of the partnership may also be brought against any one or more of such partners, as carrying on or as having carried on business jointly with others, without naming such others in the writ of summons, under the name and style of their said co-partnership firm; and if judgment is recovered against him or them, any other partner or partners may be sued jointly or severally on the original cause of action on which such judgment was obtained. 2. Any judgment obtained against any member of such existing co-partnership for a partnership debt or liability may be enforced by process against all and every the partnership stock, property, and effects in the same manner and to the same extent as if such judgment had been obtained against such partnership. 3. If any such action is founded on any obligation or instrument in writing in which all or any of the partners bound by it are named, then all the partners named therein shall be made parties to such action.

R. S., c. 83, § 9.

**Firm's name to be on bill heads, etc. 12.** In all cases in which a firm name or style is used, the name or names of the persons composing the firm shall be distinctly written or printed on all the bill-heads and letter-heads used by such firm.

R. S., c. 83, § 19.

**Penalty for not filing declaration. 13.** Every member of any partnership and every person doing business under a firm name or style indicating a plurality of members of such firms who fails to file the declaration required by this Chapter, shall be liable to a penalty of not less than five dollars or more than one hundred dollars, half of such penalty to belong to the Crown for the use of the city, town, or municipality in which such member or person does business, and half to the prosecutor.

R. S., c. 83, § 13.

**Registrar of Deeds to enter declarations. 14.** The Registrar of Deeds shall enter all declarations made under this Chapter, in the order in which the same are received, in a book to be kept by him for that purpose, which shall at all times during office hours be open to the inspection of the public gratuitously.

R. S., c. 83, § 14.

**Books of registry. "Firm index book." "Individual index book." 15.** 1. The Registrar shall keep two alphabetical index books of all declarations filed by him in pursuance of this Chapter. 2. In one of such books, to be called the "Firm Index Book," the Registrar shall enter in alphabetical order the firm names of the partnerships in respect to which declarations have been filed by him, and shall place opposite each such entry the names of the person or persons composing such firm, and the date of the receipt by him of the declaration, in the manner shewn in form "C" in the Schedule to this Chapter. 3. In the second of such books, to be called the "Individual Index Book," the Registrar shall enter in alphabetical order the names of the members of each of such firms, and shall place opposite such entry the firm name or style of the firm of which such person is a member, and the date of the receipt of the declaration, in the manner shewn in the form "D" in the Schedule to this Chapter.

R. S., c. 83, §§ 15, 16, 17.

**Registrar's fees. 16.** The Registrar of Deeds shall be entitled to charge for registering each declaration the fees mentioned in the Chapter "Of Costs and Fees."

R. S., c. 83, § 18.

**Not to apply to limited partnerships. 17.** Nothing in this Chapter contained shall apply to cases arising under the provisions of the Chapter "Of Limited Partnerships and Sureties to Firms."



*Schedule.**A.***Section 3.***Declaration of partnership.*

Province of Nova Scotia, }  
 County of }  
 We, , of , in , (occupation)  
 and , of , in , (occupation)  
 hereby declare:  
 1. That we have carried on and intend to carry on trade and business as ,  
 at , in partnership under the name and firm of ,  
 [or I, (or we) the undersigned of in , hereby declare that  
 I (or we) have carried on and intend to carry on trade and business as  
 at , in partnership with C. D. , of ,  
 and E. F. , of , (as the case may be.)]  
 2. That the said partnership has subsisted since the day of  
 one thousand nine hundred and  
 3. And that we [(or I), (or we) and the said C. D. and E. F. ,]  
 are and have been since the said day the only members of the said partnership.  
 Witness our hands at , this day of  
 one thousand nine hundred and

*B.***Section 6.***Declaration of dissolution of partnership.*

Province of Nova Scotia, }  
 County of }  
 I, , formerly a member of the firm carrying on business as ,  
 at , in the County of under the firm name of ,  
 do hereby declare that the said partnership was on the day of ,  
 dissolved.  
 Witness my hand at , the day of ,  
 , one thousand nine hundred and

*C.***Section 15.***Firm index book.*

Style of Firm.	Names of Persons composing the Firm.	Date of Filing Declaration.
John Smith & Co.	John Smith, William Brown, Charles Robinson.	July 1, 1900.

*D.***Section 15.***Individual index book.*

Name of Individual.	Style of Firm of which a Member.	Date of Filing Declaration.
George Wilson.	Geo. Wilson & Co.	July 1, 1900.

**c) Rev. St. 1900, c. 144. Of Limited Partnerships and Sureties to Firms.**

Limited partnerships, how formed. Objects. General and special partners.

1. 1. Two or more persons may enter into and form limited partnerships for the transaction of mercantile, mechanical, or manufacturing business, upon the

terms, with the rights and powers, and subject to the conditions and liabilities, hereinafter prescribed. Nothing in this Chapter shall authorize any such partnerships to engage in any banking operation, or to become insurers upon any marine risk, or upon loss by fire, or upon any life. 2. Such partnerships may consist of one or more persons called general partners, who shall be responsible as general partners now are, and of one or more persons, who shall contribute in actual cash payments a specific sum as capital to the common stock, called special partners. Special partners shall not be liable for the debts of the partnership beyond the fund so contributed by them to the capital, except in cases hereinafter mentioned. The general partners only shall be authorized to transact the business of the partnership and bind the same by the signature of the partnership name or otherwise.

R. S., c. 83, § 32.

**Certificate and preliminary proceedings in case of limited partnerships.** 2. 1. Persons desirous of forming such partnerships shall, before the same shall go into operation, make and severally sign a certificate containing the name of the firm under which such partnership is to be conducted, the nature of the business to be transacted, the names of all the partners interested therein, distinguishing which are general and which special partners, and their respective places of residence, the amount of capital which each special partner has contributed to the common stock, the period at which the partnership is to commence and at which it will terminate. Such certificate shall be acknowledged by the several persons signing the same before a Judge of the Supreme or County Court or justice of the peace; and such acknowledgment shall be certified in writing on such certificate by the person before whom the same is made. 2. The certificate so acknowledged and certified shall be filed in the office of the Registrar of Deeds for the registration district where the principal place of business of the partnership is situated, and shall be recorded by him at large in a book to be kept for that purpose, open to public inspection; and if the partnership has places of business situated in different districts, a transcript of the certificate and of the acknowledgment thereof, duly certified by such Registrar, shall be filed and recorded in like manner in the office of the Registrar of every such district.

R. S., c. 83, § 33.

**Certificate to be verified under oath.** 3. An affidavit of one or more of the general partners and also of one or more of the special partners, shall also at the same time be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually and in good faith paid in cash; and no such partnership shall be deemed to have been formed until a certificate has been made, acknowledged, filed, and recorded, and an affidavit filed as above directed; and if any false statement is made in such certificate or affidavit, all persons interested in such partnership shall be liable as general partners.

R. S., c. 83, § 34.

**Publication in newspapers and by handbills.** 4. The terms of every such partnership when registered shall immediately be published at least six weeks in the *Royal Gazette* and one other newspaper published in Halifax, and by handbills posted up in some public place in the places in which the business of the partnership is carried on. If such publication is not so made, such partnership shall be deemed general. Affidavits taken before a justice of the publication of such notice by the printers of newspapers who have published the same, and by the persons who have posted the handbills, may be filed with the Registrar with whom the certificate of the partnership has been filed, and shall be evidence thereof.

R. S., c. 83, § 35.

**Renewals of limited partnerships, how provided for.** 5. Every renewal or continuance of any such partnership beyond the time originally fixed for its duration shall be certified, acknowledged, and recorded, and an affidavit of a general and special partner made and filed, and notice given in the manner herein required for its original formation; every such partnership otherwise renewed or continued shall be deemed a general partnership.

R. S., c. 83, § 36.

**Alterations in business to constitute general partnership, unless in case of renewal.** 6. Every alteration made in the names of the partners, the nature of the business, or the capital or shares thereof, or in any other matter specified in the original



certificate, shall be deemed a dissolution of the partnership; and every such partnership carried on after any alteration shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the next preceding section.

R. S., c. 83, § 37.

**Limited partnerships, under what names conducted.** 7. The business of the partnership shall be conducted under a firm in the names of the general partners only, without the addition of the word "company" or any other general term; and any special partner whose name is used in such firm with his privity shall be deemed a general partner.

R. S., c. 83, § 38.

**Actions to be in names of general partners.** 8. Actions in relation to the business of the partnership may be brought and conducted by and against the general partners, as if there were no special partners.

R. S., c. 83, § 39.

**Regulations as to capital stock and distribution of profits.** 9. No part of the sum contributed by a special partner to the capital stock shall be withdrawn by him or paid or transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but a partner may annually receive lawful interest on the sum so contributed by him, if payment thereof will not reduce the original capital; and if after the payment of such interest any profit remains to be divided, he may also receive his portion of such profit; but if it appears that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall restore the amount necessary to make good his share of capital, with interest.

R. S., c. 83, § 40.

**Special partners may advise but shall not transact business for partnership.** 10. A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise; and if he interferes contrary to these provisions he shall be deemed a general partner. General partners shall be liable to account to each other and to the special partners for their management of the concern, as other partners now are.

R. S., c. 83, § 41.

**Liability of partner for fraud.** 11. A partner guilty of any fraud in the affairs of such partnership shall be liable civilly to the person injured to the extent of the damage.

R. S., c. 83, § 42.

**Preferential assignment void as against creditors.** 12. Every sale, assignment, or transfer of any of the property or effects of such partnership, or of a general or special partner, made by such partnership or a general or special partner, when insolvent or in contemplation of insolvency, with intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership, and every warrant of attorney executed, and every judgment confessed, lien created, or security given by such partnership, or general or special partner, under the like circumstances and with the like intent, shall be void, as against the creditors of the partnership. A special partner who violates any provision of this Chapter, or concurs in, or assents to any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

R. S., c. 83, § 43.

**Creditors' claims preferred.** 13. In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor, until the claims of all other creditors of the partnership are satisfied.

R. S., c. 83, § 44.

**Dissolution, how effected.** 14. No dissolution of such partnership by the acts of the parties shall take place previous to the time specified in the certificate of its formation or in the certificate of its renewal, until a notice of such dissolution, has been filed and recorded in the Registrar's office in which the original certificate was recorded, and published once in each week for four weeks in the *Royal Gazette*, and in some other newspaper printed in each of the counties in which the partnership has places of business.

R. S., c. 83, § 45.

*Sureties to or for firms.*

**Sureties to or for firms not answerable after change in partnership.** 15. No promise made to answer for the debt, default, or miscarriage of another, made to a firm consisting of two or more persons, or to a single person trading under the name of a firm, and no promise to answer for the debt, default, or miscarriage of a firm, consisting of two or more persons, or of a single person trading under the name of a firm, shall be binding on the person making such promise in respect to anything done or omitted to be done after a change has taken place in any one or more of the persons constituting the firm, or in the person trading under the name of a firm, unless the intention of the parties that such promise shall continue to be binding notwithstanding such change appears either by express stipulation, or by necessary implication from the nature of the firm, or otherwise.

R. S., c. 83, § 46.

**Companies.****a) Rev. St. 1900, c. 127. Of General Provisions respecting Domestic and Foreign Companies.**

**Corporations; their powers and privileges.** 1. Every company shall, where no other provision is specially made, be capable in its corporate name to sue and be sued, to prosecute and defend actions, to have a common seal which it may alter at pleasure, to elect in such manner as it deems proper all necessary officers, and to fix their compensation and to define their duties, and to make by-laws and regulations, not contrary to law nor repugnant to the charter or Act by which any such company is created, for its own government and the due management of its affairs.

R. S., c. 78, § 1. Plaintiff agreed with certain other persons to subscribe a certain amount towards a steamship enterprise and assist in getting a suitable ship, provided he should be master. He was appointed master, and subsequently the company was incorporated, the plaintiff receiving stock to the amount of his contribution. Plaintiff was dismissed by the directors of the company for failure to obey the instructions of the directors. It was held that the fact of the master being a shareholder in the corporation owning the vessel had no bearing on the case, and under appropriate circumstances the directors were entitled to dismiss him. He occupied the position both of shareholder and employee of the company. He was not a part owner of the vessel. — *Guildford v. Anglo-French Steamship Co.*, (1882), 9 S. C. R. 303; reversing s. c. (1881), 14 N. S. 54. *Semble*, a company is not responsible for representations made prior to incorporation unless such representations are expressly adopted by the company after incorporation. — *Gourlie v. Chandler*, (1907), 41 N. S. 341. Where a statutory duty is imposed on a company it is liable for any damage caused to the property of another through the negligent performance of that duty, even though the negligence was primarily that of an independent contractor employed by the company. — *McRury v. Dominion Coal Co.*, (1896), 40 N. S. 89. A company is liable to conviction under the Summary Convictions Act. — *The King v. Dominion Coal Co.*, (1907), 41 N. S. 137. A company authorized to carry on a general mercantile business and to buy and sell and otherwise deal in real and personal property has the power to make and accept notes, bills of exchange, etc. — *Ryan v. Terminal City Co.*, (1893), 25 N. S. 131.

**By-laws, and proceedings to be regulated thereby.** 2. Every company may by its by-laws, where no other provision is specially made, determine the manner of calling and conducting meetings, the number of members which shall constitute a quorum, the number of shares which shall entitle the members to one or more votes, the mode of voting by proxy, the mode of selling shares for the non-payment of instalments and of transferring shares generally, the tenure of office of the several officers, and the purchase, conveyance and sale of its real and personal property; and may annex penalties to its by-laws not exceeding in any case the sum of twenty dollars for any one offence.

R. S., c. 78, § 2.

**First meeting, how called.** 3. The first meeting of every company, shall, unless otherwise provided in the charter or Act of incorporation, be called by notice signed by any one or more of the persons named as incorporators in the charter or Act of incorporation, and setting forth the time, place, and purposes of the meeting, and such notice shall, seven days at least before the meeting, be delivered to each member, or left at his place, of residence, or published in some newspaper of the county in which the company is established or proposed to be established, or where its principal



place of business is situated or proposed to be situated, or if there is no newspaper in the county then in two newspapers published in the city of Halifax.

R. S., c. 78, § 4.

**Meeting, how called in special cases.** 4. Whenever by reason of the death, absence, or disability of the officers of any company there is no person authorized to call or preside at a meeting of the members thereof, any three or more of the members may call such meeting by giving the notice as required by law.

R. S., c. 78, § 5.

**Powers of corporation when assembled.** 5. The members when so assembled may choose a chairman, and may elect officers to fill all vacancies then existing, and may transact such other business as might by law be transacted at a regular meeting of the company.

R. S., c. 78, § 6.

**Shares, personal property.** 6. The shares or stock of every company shall be deemed to be personal property for all purposes.

R. S., c. 78, § 7.

**Real estate sold as personal property.** 7. The real property of any company may be sold under execution in the same manner as its personal property.

R. S., c. 78, § 8.

**Acts to expire unless put in operation within three years.** 8. Every charter or Act of incorporation shall expire unless the company thereby incorporated goes into operation within three years from the passing thereof, unless otherwise specially provided therein.

R. S., c. 78, § 9.

**Expiring company continued for three years to wind up business.** 9. Every company, the charter or Act of incorporation of which, after such company has gone into operation, expires or is annulled by forfeiture or otherwise, shall nevertheless be continued as a body corporate for the term of three years after the time when such charter or Act of incorporation has so expired or been annulled, for the purpose of prosecuting and defending actions by or against it, and of enabling it to settle and close its business, to dispose of its property, and to divide its capital stock; but not for the purpose of continuing the business for which such company was established.

R. S., c. 78, § 10.

**Trustees may be appointed to wind up business within the three years.** 10. When the charter of any company so expires or is annulled, the Supreme Court, on application of any creditor of such company or of any member thereof at any time within the three years, may appoint a trustee or trustees to take charge of the estate and effects of the company and to collect the debts and property due and belonging thereto, with power to prosecute and defend actions in the name of the company, to appoint agents and to do all other acts which might be done by such company that are necessary for the final settlement of the unfinished business of the company; and the power of such trustees may be continued beyond the three years if the Court thinks necessary.

R. S., c. 78, § 11.

**Liability of individual members.** 11. No member of any company shall be relieved from individual liability for its debts or obligations; but each member thereof shall be liable as a partner to the same extent as if no company existed; and in case any execution issued on any judgment against the company is returned unsatisfied the individual real and personal property of every member of the company shall be liable to respond such judgment under execution issued thereon in the same manner as if the same was a private debt due by such member, unless the special Act creating the company exempts its members from such liability; and any member who is compelled to pay any moneys on account of the debts of the company may recover the same by action against the company.

R. S., c. 78, § 13.

**Liability of directors, etc., personal in certain cases.** 12. The directors or board of managers of any company the liability of whose members is limited by the charter or Act of incorporation, unless otherwise specially directed therein, shall in all cases be personally liable for any debt incurred by them on account of the company beyond the amount of the stock subscribed, without the sanction of the company obtained at a meeting thereof held in accordance with the by-laws, unless such

larger amount of dealing is specially authorized by the charter or Act of incorporation; but this section shall not extend to insurance companies.

R. S., c. 78, § 14.

**Act of incorporation of companies valid without seal.** 13. The acts of any company performed within the scope of its charter or Act of incorporation shall be valid, notwithstanding they are not done under or authenticated by the seal of such company.

R. S., c. 78, § 15.

**Resident manager to be appointed for purposes of service. Name to be filed. Service in default of appointment.** 14. [As amended by Acts, 1904, c. 24, § 3.]

1. Every incorporated company doing business within the Province shall appoint a recognized manager or agent resident within the Province, service upon whom of any process, notice, or other document shall be deemed sufficient service upon the company. 2. A statement shewing the name and address of such manager or agent shall be filed in the office of the Provincial Secretary by every such company. 3. In default of such appointment, or of the filing of such statement by any such company, or in case of the absence or death of such manager or agent, any process, notice, or document may be served on any officer or employee of the company, or for want of such officer or employee may be posted on a principal building of the company, and such service or posting shall be deemed a sufficient service on the company.

Where a company formed under the English Companies Act, with a registered office in London, has its real head office in the Province of Ontario a writ is properly served upon the principal officers in Ontario. — *W. H. Johnson Co v. Bell Organ & Piano Co.*, (1896). 29 N. S. 84. A non-resident shareholder in a company incorporated in a foreign State, having its principal place of business in Nova Scotia, may maintain an action in the Courts of this Province to enforce the performance of duties imposed upon the company in relation to its shareholders. — *Merritt v. Copper Crown Co.*, (1903), 36 N. S. 383.

[15. Is repealed.]

**Books, etc., may be inspected by Governor-in-Council.** 16. The books and accounts of every such company so doing business within the Province shall at all times be open to the inspection of such person as the Governor-in-Council appoints to inspect the same.

Acts, 1893, c. 5, § 1.

**"Arbitration Act" to apply.** 17. Whenever by any charter or Act of incorporation it is provided that any dispute or matter of controversy in which the corporation is interested or any damages to which it is liable shall be settled or ascertained by arbitration, such provision shall be deemed a "submission to arbitration" within the meaning of that expression in *The Arbitration Act*.

R. S., c. 78, § 17.

**Foreign company to file statement.** 18. [As amended by Acts, 1904, c. 24, § 5.] 1. Every company not incorporated by or under the authority of an Act of the Legislature of Nova Scotia which carries on business in Nova Scotia, having gain for its purpose or object shall, before beginning business in Nova Scotia, make out and transmit to the Provincial Secretary a statement under oath shewing: a) The corporate name of the company; b) How and under what special or general Act the company was incorporated; c) Where the head office of the company is situated; d) The amount of the authorized capital stock; e) The amount of stock subscribed or issued, and the amount paid up thereon; f) The nature of each kind of business the company is empowered to carry on, and what kind or kinds of business is or are carried on or intended to be carried on in Nova Scotia; g) The names of the directors and officers of the company. 2. Every such company shall also transmit to the Provincial Secretary in the month of January in each year a statement, certified under the hand of its recognized manager or agent, resident within the Province, shewing the names of the directors and officers of the company, and the amount of the authorized capital stock, and the amount of stock subscribed or issued, and the amount paid up thereon. 3. Every such company which fails to comply with the provisions of this section shall be liable to a penalty of ten dollars for every day during which such default continues, and every director, manager, secretary, agent, traveller, or salesman of such company, who with notice of such default transacts within Nova Scotia any business whatever for such company shall for each day on which he so transacts such business be liable to a penalty of ten dollars, to be recovered in the name of the Provincial Secretary in the Supreme



Court or in the County Court. 4. The Governor-in-Council may, after such statement has been received by the Provincial Secretary, relieve in whole or in part any company or person from any penalty incurred by reason of default in transmitting the same.

A single transaction within Nova Scotia is not a "carrying on business" within the Province within the meaning of Order 47, r. 6. — *Halifax Hotel Co. v. Canadian Fire Engine Co.*, (1906), 41 N. S. 97. And, *semble*, under this section. A failure to comply with the Provincial statute relating to the registration of foreign companies does not render invalid contracts entered into by the company within the Province, or prevent it from recovering thereon. — *American Hotel Supply Co. v. Fairbanks*, (1907), 41 N. S. 444.

**Execution of trusts.** 19. [Added by Acts, 1903, c. 17, § 1.] No company shall be bound to see to the execution of any trust, whether express, implied, or constructive, in respect of any of its shares, and the receipt of a shareholder in whose name the same stands on the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, whether or not notice of the trust has been given to the company, and the company shall not be bound to see to the application of the money paid on such receipt.

**Application of section 19.** 20 [Added by Acts, 1903, c. 17, § 1.] The provisions of section 19 shall apply to all companies heretofore incorporated, and to all transfers of stock of such companies heretofore made, and to all payments of and receipts taken for any dividend or money payable in respect to any share or shares heretofore made or given as well as to companies hereafter incorporated.

**Commissions for subscriptions of shares.** 21. [Added by Acts, 1903, c. 17, § 1.] 1. It shall be lawful for any company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or for procuring or agreeing to procure subscriptions for any shares in the company, if such commission paid or agreed to be paid does not exceed ten per cent. of the price at which such shares are sold. 2. Save as aforesaid, no company shall apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discounts, or allowances to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolutely or conditionally, for any shares of the company, whether the shares or moneys be so applied by being added to the purchase money of any property acquired by the company, or to the contract price of any work to be executed for the company, or the money being paid out of a nominal purchase money or contract price or otherwise. 3. The provisions of this section shall apply to every company heretofore incorporated or that may hereafter be incorporated, and all commissions heretofore paid out of capital account or income for underwriting which would have been legal and valid under the provisions of this section if the same had then been in force, are legalized and declared to be and to have been legal and valid.

**Fees.** 22. [Added by Acts, 1904, c. 24, § 6.] Every incorporated company doing business in Nova Scotia, and having gain for its purpose or object, shall, in the month of January in each year, transmit to the Provincial Secretary a registration fee according to the following scale, that is to say, annual registration fees for companies incorporated by or under the authority of an Act of the Legislature of Nova Scotia, or of the Parliament of Canada, having a nominal capital:

Not exceeding \$	10,000 . . . . .	\$ 5.00
" "	100,000 . . . . .	10.00
" "	500,000 . . . . .	20.00
Exceeding	500,000 . . . . .	25.00
Mutual insurance companies having no capital stock .		50.00

Annual registration fees for companies not incorporated by or under the authority of an Act of the Legislature of Nova Scotia nor of the Parliament of Canada, having a nominal capital:

Not exceeding \$	10,000 . . . . .	\$ 10.00
" "	100,000 . . . . .	20.00
" "	500,000 . . . . .	40.00
Exceeding	500,000 . . . . .	50.00
Mutual insurance companies having no capital stock .		50.00

A foreign company carrying on business of a continuous character within the Province, through agents, is liable to the payment of an annual license fee in the place where such business is carried on. — *Halifax v. Jones*, (1896), 28 N. S. 452.

**Penalty for refusal to file statement. 23.** [Added by Acts, 1904, c. 24, § 6.] Any company which shall neglect or refuse to file the statement as required by section 14 of this Chapter, and any company which shall neglect or refuse to transmit its registration fee as required by section 22 of this Chapter, shall be liable to a penalty of one hundred dollars for each such neglect or refusal, to be recovered in the name of the Provincial Secretary in the Supreme Court or in the County Court; and any company which shall neglect or refuse for two consecutive years to file the statement as required by section 14 or by subsection 2 of section 18 of this Chapter, or to transmit its registration fee as required by section 22 of this Chapter shall in addition to any other penalty or penalties to which it is liable, be liable to have its charter, or its right to do business in Nova Scotia, as the case may be, forfeited.

**Not to apply to Nova Scotia companies. 24.** [Added by Acts, 1904, c. 24, § 6.] This Chapter, except sections 14, 16, 22, and 23, shall not apply to companies incorporated under the *Nova Scotia Joint Stock Companies' Act*, or under the *Nova Scotia Companies' Act*.

**Allegations. 25.** [Added by Acts, 1908, c. 30, § 1.] In any action, suit, prosecution, or proceeding under this Act, it shall be sufficient to allege that any company is or was at any time or times doing business in Nova Scotia, without proving the same, and the burden shall be upon the defendant of proving that such company is not or was not at the time or times so alleged doing business in Nova Scotia.

## b) Rev. St. 1900 c. 128. Of Joint Stock Companies.<sup>1)</sup>

### *Short title.*

**Short title. 1.** This Chapter may be cited as the *Nova Scotia Companies' Act*.

### *Interpretation.*

**Interpretation. 2.** In this Chapter, unless the context otherwise requires: a) The expression "company" means any joint stock company incorporated or about to be incorporated under this Chapter; b) the expression "Registrar" means the Registrar of Joint Stock Companies appointed under this Chapter; c) The expression "Court" means the Supreme Court of Nova Scotia, or any Judge of the Supreme Court.

### *Registrar.*

**Registrar. Appointment and duties. Seals. Inspection. 3.** 1. The Governor-in-Council may from time to time appoint a person to be Registrar of Joint Stock Companies for the purposes of this Chapter. Such person shall hold office during pleasure, and shall be paid such salary as the Governor-in-Council determines. 2. It shall be the duty of the Registrar to enforce compliance with the several provisions, regulations, and stipulations in this Chapter contained, or any regulations or stipulations made thereunder, but such duty shall not affect the right of any other person to compel compliance with the same. 3. The Governor-in-Council may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies. 4. Every person may inspect the documents kept by the Registrar; and there shall be paid for such inspection such fees as are appointed by the Governor-in-Council, not exceeding twenty-five cents for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar; and there shall be paid for such certificate of incorporation, certified copy or extract, such fees as the Governor-in-Council appoints, not exceeding one dollar for the certificate of incorporation, and not exceeding ten cents for each folio of such copy or extract.

### *General rules.*

**General rules. 4.** The Governor-in-Council may from time to time by Order-in-Council make and establish such general rules and orders not inconsistent with this Chapter, as from time to time to him appear necessary or expedient for the

<sup>1)</sup> The references in the notes (Imp.) are to the *Imperial Companies (Consolidation) Act, 1908*, (8 Edw. 7, c. 69).



purpose of giving full effect to the provisions of this Chapter, or any or either of them, and for prescribing the course to be adopted in the course of official business under this Chapter, and the forms to be used therein. All such general rules and orders shall, after the making thereof, be published in the *Royal Gazette*, and shall thereupon have the force of law until amended, altered, or revoked.

*Division of chapter.*

**Division of chapter. 5.** This Chapter is divided into five parts, relating to the following subject matters: Part One. — To the constitution and incorporation of companies under this Chapter. Part Two. — To the distribution of the capital and liability of members of companies under this Chapter. Part Three. — To the management and administration of companies under this Chapter. Part Four. — To the prospectus of companies and the liability of directors and promoters in respect thereto. Part Five. — To the application of this Chapter to existing companies.

*Part I. Constitution and Incorporation.*

*Memorandum of association.*

**Memorandum of association. 6.** Any three or more persons associated for any lawful purpose, except the formation of a banking, loan, or trust company, may, by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this Chapter in respect to registration, form an incorporated company with or without limited liability.

R. S., c. 79, § 3; Imp. § 2.

**Liability of members. 7.** The liability of the members of a company formed under this Chapter may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

Imp. § 2.

**Contents of memorandum of association where liability limited. 8.** Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things, that is to say: 1. The name of the proposed company, with the addition of the word "limited" as the last word of such name; 2. The place within the Province of Nova Scotia at which the registered office of the company is proposed to be situated; 3. The objects for which the proposed company is to be established; 4. A declaration that the liability of the members is limited; 5. The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount; 6. The time of existence of the proposed company, if it is intended to procure incorporation for a limited period only.

Subject to the following regulations: 1. That no subscriber shall take less than one share. 2. That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes, together with his address and calling.

Imp. § 3.

**Where company limited by guarantee. 9.** Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following things, that is to say: 1. The name of the proposed company, with the addition of the words "limited by guarantee" as the last words in such name; 2. The place within the Province of Nova Scotia at which the registered office is proposed to be situated; 3. The objects for which the proposed company is to be established; 4. A declaration that each member undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such sum as is required, not exceeding a specified amount.

Imp. § 4.

**Where liability not limited. 10.** Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association shall contain the following things, that is to say: 1. The name of the proposed company; 2. The place within the Province of Nova Scotia at which the registered office of the company is proposed to be situated; 3. The objects for which the proposed company is to be established.

Imp. § 5.

**Memorandum of association, how signed. 11.** The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and it shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there was in the memorandum contained on the part of himself his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Chapter.

Imp. § 14.

*Articles of association.*

**Articles of association. 12.** The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied when registered by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient; the articles shall be expressed in separate paragraphs numbered arithmetically; they may adopt all or any of the provisions contained in the table marked "A" in the first Schedule hereto. They shall in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration. In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the articles of association the number of shares that he takes.

Imp. §§ 10, 12.

**In case of company limited by shares. 13.** [As amended by Acts, 1903, c. 18, § 2.] In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the table marked "A" in the first Schedule hereto, the last mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association and the articles had been duly registered.

Imp. § 11.

**Further provisions respecting articles of association. 14.** The articles of association shall be printed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. When registered they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there was in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Chapter; and all moneys payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company.

Imp. § 14.

**Registration. 15.** [As amended by Acts, 1909, c. 39, § 1.] The memorandum of association and a copy thereof and the articles of association, if any, shall be delivered to the Registrar, who shall retain the same and register the memorandum and articles if any; provided, however, that if the Registrar thinks fit he may refuse to register the same until the Governor-in-Council has approved thereof.

Imp. § 15.



*Fees.*

**Fees. Payment of. Recovery of. 16.** 1. There shall be paid to the Registrar by a company having a capital divided into shares in respect to the several matters mentioned in the table marked "B" in the first Schedule hereto, the several fees therein specified, or such other fees as the Governor-in-Council from time to time, by Order-in-Council, directs; and by a company not having a capital divided into shares in respect to the several matters mentioned in the table marked "C" in the first Schedule hereto, the several fees therein specified, or such other fees as the Governor-in-Council from time to time, by Order-in-Council, directs. All such fees paid to the Registrar in pursuance of this Chapter shall form part of the general revenue of the Province. 2. Any yearly fee payable by any company may be recovered in any Court, irrespective of the amount of such fee, by an action at the suit of the Registrar.

Imp. §§ 15, 244.

*Registration and incorporation.*

**Registration and certificate. 17.** Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Chapter, or by the desire of the parties, to be registered, the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company, that the company is limited.

**Incorporation, seal, etc. 18.** The subscribers of the memorandum of association together with such other persons as from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is in this Chapter mentioned.

**Certificate of incorporation. 19.** A certificate of the incorporation of any company given by the Registrar shall be conclusive evidence that all the requisitions of this Chapter in respect to registration have been complied with.

**Copy of memorandum to be forwarded to members on request. 20.** A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded by the secretary or other officer of the company to every member at his request, on payment of the sum of twenty-five cents, or such less sum as is prescribed by the company, for each copy; and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the company so making default shall, for each offence, be liable to a penalty not exceeding five dollars, and every director, manager, secretary, and officer of the company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty.

Imp. § 18.

*Name of company.*

**Name of company. 21.** [As amended by Acts, 1909, c. 38, § 1.] No company shall be registered under a name: a) identical with that of any other subsisting company incorporated or unincorporated, or so nearly resembling the same as to be calculated to deceive, except in a case in which such subsisting incorporated company is in the course of being dissolved, and testifies its consent in such manner as the Registrar requires, or b) or otherwise objectionable. 2. If any company, through inadvertence or otherwise, is, or has been registered by a name a) identical with that of any subsisting company incorporated or is registered, unincorporated or which the Registrar deems so nearly to resemble the same as to be calculated to deceive, except in a case in which such consent as aforesaid has been given, or b) which the Registrar deems to or otherwise objectionable, such first mentioned company shall, upon the direction of the Registrar, change its name, and upon such change being made the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have

been continued or commenced against the company by its former name. 3. The Registrar may refuse to register any company under a name which he deems to be objectionable.

**Provisions for change of name. 22.** Any company under this Chapter with the sanction of a special resolution of the company, and with the approval of the Governor-in-Council, may change its name, and upon such change being made, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

Imp. § 8.

**Effect of alteration of name. 23.** No such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Imp. § 8.

#### *Change of constitution.*

**Change of constitution and notice of modification or alteration. 24.** 1. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid up shares into stock, but, save as aforesaid, and as is hereinafter provided, no alteration shall be made by any company in the conditions contained in its memorandum of association. 2. Notice of every such modification or alteration shall be given by the company to the Registrar within fifteen days from the passing of the resolution by which such modification or alteration is authorized, and every such notice shall specify any shares so consolidated, divided, or converted into stock. 3. In case of default in giving such notice: a) every company so making default, and b) every director, manager, secretary, or other officer of such company who knowingly and wilfully authorizes or permits such default, shall be liable to a penalty of twenty-five dollars for every day during which such default continues.

Imp. §§ 41, 42.

**Alteration of regulations by special resolution. Notice of alteration. 25.** 1. Subject to the provisions of this Chapter, and to the conditions contained in the memorandum of association, any company formed under this Chapter may, in general meeting from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the table marked "A" in the first Schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution. 2. Notice of every such alteration shall be given to the Registrar within fifteen days from the passing of the resolution authorizing the same, and in case of default in giving such notice: a) every company so in default, and b) every director, manager, secretary, or other officer of any such company who knowingly and wilfully authorizes or permits such default, shall be liable to a penalty of twenty dollars for each and every day during which such default continues.

Imp. § 13.

**Alteration of memorandum of association to be confirmed by Supreme Court. Proceedings and order. Power of Court to confirm in whole or in part. Notice to creditors. Terms. Discretion of Court. Grounds of confirmation. 26.** 1. Subject to the provisions of this Chapter, any company registered under this Chapter may, by special resolution, alter the provisions of its memorandum of association, with respect to the object of the company, so far as is required for any of the purposes hereinafter specified, but in no case shall any such alteration take effect until confirmed on petition by the Supreme Court. 2. Before confirming any such alteration



the Supreme Court must be satisfied: a) that sufficient notice has been given to every holder of bonds or debentures, or debenture stock of the company, and any person or class of persons whose interest will, in the opinion of the Court, be affected by the alteration, and b) that with respect to every creditor who, in the opinion of the Court, is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court. Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section. 3. An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper. 4. The Court shall, in exercising its discretion under the provisions of this section, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interest of dissentient members; and the Court may give such directions and make such orders as it thinks expedient for the purpose of facilitating any such arrangement or carrying the same into effect; provided always, that it shall not be lawful to expend any part of the capital of the company in any such purchase. 5. The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company, if it appears that the alteration is required in order to enable the company: a) to carry on its business more economically or more efficiently, or b) to attain its main purpose by new or improved means, or c) to enlarge and change the local area of its operations, or d) to carry on some business which, under existing circumstances, may conveniently or advantageously be combined with the business of the company, or e) to restrict or abandon any of the objects specified in the memorandum of association.

Imp. § 9.

**Registration of altered memorandum of association. Penalty. 27.** 1. Where a company has altered the provisions of its memorandum of association with respect to the objects of the company, and such alteration has been confirmed by the Court, a copy of the order confirming such alteration, together with a printed copy of the memorandum of association so altered, shall be delivered by the company to the Registrar within fifteen days from the date of the order, and the Registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Chapter with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Chapter) the memorandum so altered shall be the memorandum of association of the company. 2. If a company makes default in delivering to the Registrar any document required by this section to be delivered to him, the company shall, upon summary conviction, be liable to a penalty not exceeding twenty-five dollars for every day during which it is in default, and every director, manager, secretary, and officer of the company who knowingly and wilfully authorizes or permits such default, shall upon summary conviction, be liable to the like penalty.

Imp. § 9.

#### *Reduction of capital.*

**Reduction of capital. Power to reduce. 28.** 1. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the Registrar as is hereinafter mentioned. 2. The power to reduce capital conferred by this section shall include the power to reduce paid up capital, and also the power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which is in excess of the wants of the company; and paid up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved.

Imp. § 46.

After such reduction "and reduced" added to name. 29. Every company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court fixes, the words "and reduced" as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company.

Imp. § 48.

**Company to apply for order confirming reduction.** 30. 1. A company which has passed a special resolution for reducing its capital may apply to the Court, by petition, for an order confirming the reduction, and on the hearing of the petition the Court, if satisfied that with respect to every creditor of the company who under the provisions of this Chapter is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as in this Chapter provided, may make an order confirming the reduction on such terms and subject to such conditions as to it seems fit. 2. Where the reduction of the capital of a company does not involve either the diminution of any liability in respect to unpaid capital or the payment to any shareholder of any paid up capital: a) the creditors of the company shall not, unless the Court otherwise directs, be entitled to object or required to consent to the reduction; and b) it shall not be necessary before the presentation of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of, the words "and reduced." 3. In any case in which the Court thinks fit so to do, it may require the company to publish in such manner as the Court directs the reasons for the reduction of its capital, or such other information in regard to the reduction of its capital as the Court thinks expedient, with a view to give proper information to the public in relation to the reduction of its capital by a company, and if the Court thinks fit, the causes which lead to such reduction.

Imp. § 47.

**Right of creditors to object. List of objecting creditors to be settled by Court.**

31. 1. Where a company proposes to reduce its capital every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object. 2. The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors, and the nature and amounts of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction.

Imp. § 49.

**Court may dispense with consent of creditors on security given.** 32. Where a creditor whose name is entered on the list of creditors and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may, if it thinks fit, dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the Court directs, a sum of such amount as is hereinafter mentioned, that is to say: a) if the full amount of the debt or claim of the creditor is admitted by the company, or though not admitted is such as the company is willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated; b) if the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company is willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it thinks fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company is liable in respect thereto, in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

Imp. § 49.

**Order and minute to be registered.** 33. 1. The Registrar upon the production to him of an order of the Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order, and of a minute, approved by the



Court, shewing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares into which it is divided, the amount of each share and the amount, if any, at the date of the registration of the minute proposed to be deemed to have been paid up on each share, shall register the order and minute, and on registration the special resolution confirmed by the order so registered shall take effect. 2. Notice of such registration shall be published in such manner as the Court directs. 3. The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Chapter with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

Imp. § 51.

**Saving right of creditors ignorant of proceedings. 34.** If any creditor who is entitled, in respect to any debt or claim, to object to the reduction of the capital of a company under this Chapter is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the space of three weeks after demand made, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company, shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and, on the company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it thinks fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

Imp. § 53.

**Minute to form part of memorandum of association. 35.** The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association; and, subject as in this Chapter mentioned, no member of the company, whether past or present, shall be liable in respect to any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Imp. § 52.

**Copy of minute, when registered, to be embodied in every copy of memorandum of association issued after its registration. 36.** A copy of the minute when registered shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section it shall be liable to a penalty not exceeding five dollars for each copy in respect to which such default is made, and every director, manager, secretary, or officer of the company who knowingly and wilfully authorizes or permits such default shall, upon summary conviction, be liable to the like penalty.

Imp. § 52.

**Penalty for concealing name of creditor entitled to object. 37.** If any director, manager, or officer of a company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall, for every such offence, be liable to a penalty not exceeding five hundred dollars.

Imp. § 54.

**Reduction by cancelling of unissued shares. 38.** Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special

resolution, as to reduce its capital by cancelling any shares which, at the date of the passing of such resolution have not been taken or agreed to be taken by any person, and it shall not be necessary that a resolution for the reduction of such capital shall be confirmed by the Court, but a minute thereof shall be registered and embodied in the memorandum of association in the manner in this Chapter provided in the cases of other reductions of capital.

Imp. § 41.

**Division of capital by sub-division of shares. Proviso. 39.** 1. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as by subdivision of its existing shares, or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association. 2. In the subdivision of its existing shares, the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Imp. § 41.

**Statement of subdivision of shares to be in accordance with resolution passed. 40.** The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association, or other official document issued after the passing of any such special resolution for the division of its capital, shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section, and every director, manager, secretary, or other officer of any such company who knowingly or wilfully authorizes or permits any such default, shall be liable to a penalty not exceeding five dollars for each copy in respect to which such default is made.

Imp. § 41.

## *Part II. Distribution of Capital and Liability of Members.*

### *Distribution of capital.*

**Definition of member. 41.** The subscribers of the memorandum of association of any company under this Chapter shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company under this Chapter, and whose name is entered on the register of members, shall be deemed to be a member of the company.

Imp. § 24.

**Nature of interest in company. 42.** The shares or other interest of any member in a company under this Chapter shall be personal property, capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real property, and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

Imp. § 22.

**Transfer by personal representatives. 43.** Any transfer of the share or other interest of a deceased member of a company under this Chapter made by his personal representative, shall, notwithstanding such personal representative is not himself a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Imp. § 29.

**No notice of trust shall be entered on register. 44.** No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies under this Chapter.

Imp. § 27.

**Company shall not be bound to see to execution of trust. 45.** The company shall not be bound to see to the execution of any trust, whether expressed, implied, or constructive, in respect to any share; and the receipt of the shareholder in whose name the same stands on the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect to such share, whether or not notice of the trust has been given to the company; and the



company shall not be bound to see to the application of the money paid upon such receipt.

R. S., c. 79, § 51.

**Executors and pledgors voting. 46.** Every executor, administrator, guardian, or trustee, shall represent the shares or stock in his hands at all meetings of the company, and may vote accordingly as a shareholder, and every person who pledges his stock may nevertheless represent the same at all such meetings, and may vote accordingly as a shareholder.

R. S., c. 79, § 50.

**Certificate prima facie evidence of title. 47.** A certificate under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be prima facie evidence of the title of the member to the share or shares or stock therein specified.

Imp. § 23.

**Entry of transfer by transferor. 48.** A company shall, on the application of the transferor of any share or interest in the company, enter in its register of members the name of the transferee of such share or interest, in the same manner and subject to the same conditions as if the application for such entry was made by the transferee.

Imp. § 28.

**Transfers to escape liability. 49.** Any transfer of shares in a company made for the purpose of getting rid of the further liability of a shareholder, as such, for a nominal or no consideration, or to a person in the menial or domestic service of the transferor, shall be deemed to be a fraudulent transfer, and need not be recognized by the company, or by the Court on the winding-up of the company.

**Effect of special resolution that portion of capital shall not be capable of being called up. 50.** A company limited by shares may, by a special resolution, declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purpose of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purpose of the company being wound up.

Imp. § 59.

**Return of dividend or bonus to shareholders in reduction of paid up capital. 51.** When any company has accumulated a sum of undivided profits, which with the consent of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it shall be lawful for the company, by special resolution, to return the same or any part thereof to the shareholders in reduction of the paid up capital of the company, the unpaid capital being thereby increased by a similar amount. The powers vested in the directors of making calls upon the shareholders in respect to moneys unpaid upon their shares shall extend to the amount of the unpaid capital as augmented by such reduction.

Imp. § 40.

**Memorandum to be first produced and registered. 52.** No such special resolution aforesaid shall take effect until a memorandum, shewing the particulars required by law in the case of a reduction of capital by order of the Court, has been produced to and registered by the Registrar.

Imp. § 40.

**Upon reduction of paid up capital, shareholders may require company to retain and invest money. 53.** Upon any reduction of paid up capital made in pursuance of this Chapter, it shall be lawful for any shareholder, or for any one or more of several joint shareholders, within one month after the passing of the special resolution for such reduction, to require the company to retain, and the company shall retain accordingly, the whole of the moneys actually paid upon the shares held by such person, either alone or jointly with any other person or persons, and which, in consequence of such reduction, would otherwise be returned to him or them; and thereupon the shares in respect to which the said moneys are so retained shall, in regard to the payment of dividends thereon, be deemed to be paid up to the same extent only as the shares on which payment as aforesaid has been accepted by the shareholders in reduction of their paid up capital; and the company shall invest and keep invested the moneys so retained in such securities authorized for investment by trustees as the company determines, and upon the money so invested, or

upon so much thereof as from time to time exceeds the amount of calls subsequently made upon the shares in respect to which such moneys have been retained, the company shall pay such interest as is received by them from time to time on such securities, and the amount so retained and invested shall be held to represent the future calls which may be made to replace the capital so reduced on those shares, whether the amount obtained on sale of the whole, or such portion thereof as represents the amount of any call when made, produces more or less than the amount of such call.

Imp. § 40.

**Company shall specify in annual list of members amounts which shareholders have required company to retain.** 54. From and after such reduction of capital, the company shall specify in the annual list of members, to be made by it as provided in this Chapter, the amounts which any of the shareholders of the company have required the company to retain, and the company has retained accordingly, in pursuance of the next preceding section of this Chapter, and the company shall also specify in the statements of account laid before any general meeting of the company the amount of the undivided profits of the company which have been returned to the shareholders in reduction of the paid up capital of the company under this Chapter.

Imp. § 40.

#### *Register of members.*

**Register of members. Names and addresses. Date of entry. Date of ceasing to be a member. Penalty for acting in contravention.** 55. Every company under this Chapter shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars: a) The names and addresses, and the occupations (if any), of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member; b) The date at which the name of any person was entered in the register as a member; c) The date at which any person ceased to be a member; and any company acting in contravention of this section shall be liable to a penalty not exceeding twenty-five dollars for every day during which its default in complying with the provisions of this section continues, and every director, manager, secretary, or other officer of the company who knowingly and wilfully authorizes or permits such contravention shall, upon summary conviction, be liable to the like penalty.

Imp. § 25. Where the special legislative act provides that the persons therein named "and such other persons as shall become shareholders in the company hereby established and their successors shall be a body corporate for the purpose of etc.," a person who merely signed the subscription list, but attended none of the meetings of the company, and before organization of it wrote the secretary stating that he would refuse any calls made upon him, can not be regarded as a shareholder of the company when formed. — *Halifax Street Carette Co. v. McManus*, (1894), 27 N. S. 173; see also *Halifax Street Carette Co. v. Lane*, (1894), 27 N. S. 178. Where a promissory note was given to the promoters of a company after the passage of the act of incorporation, but before the organization of the company, covering the price of shares, and executed in favour of persons who proposed to act as trustees of the company and who subsequently endorsed the note to the company, it was held that the note was made without consideration, the payees having no authority to act for the company, and not being in a position to bind the company to give shares to the maker. — *Halifax Street Carette Co. v. Downie*, (1894), 27 N. S. 180. A mere signing of a subscription list in a proposed company without further acts evidencing an intent to accept or repudiate liability is not sufficient to make the person so signing liable as a shareholder. — *Halifax Street Carette Co. v. Glassey*, (1894), 27 N. S. 181; see also *Halifax Street Carette Co. v. Moir*, (1895), 28 N. S. 45. Where a company was formed for the purpose of carrying on building operations and acquiring the works of an existing company and the subscription list was signed by a number of persons for an amount something less than the paid up capital and a call on the stock was paid by about half of the subscribers, after which the project was abandoned, it was held that the stock subscriptions, being conditional upon an arrangement for the union of the two companies, and that project having fallen through, there was a failure of consideration, and the subscribers who paid the call were entitled to recover the amounts paid by them, and that payment of the call under the circumstances did not waive the condition. — *In re Victor Wood Works*, (1909), 43 N. S. 368. A provision in a charter of a company that it shall not commence operations until fifty per cent. of its capital stock is subscribed and twenty-five per cent. of such subscription paid up does not prevent calls being made on stock subscribed for, nor prevent the board of provisional directors from doing any acts for or in the name of the company within their power, so long as such acts fall short from what might properly be termed "com-



mening operations." The words do not constitute a condition precedent to the creation of a body corporate, but act as a limitation upon the power of the corporation to commence operations until the prerequisite is complied with. — *North Sydney Mining Co. v. Greener*, (1898), 31 N. S. 41. An application made by the agent of a company to a person to subscribe for shares in the company, accepted by the offeree, makes the latter a shareholder, although no shares are formally allotted to him and no notice of allotment given. — *Acadia Loan Corporation v. Wentworth*, (1904), 40 N. S. 525. In negotiations for the transfer of shares a representation that the shares subscribed for are treasury stock is a material one and entitles the purchaser to repudiate the transaction if the representation is false. — *Gould v. Gillies*, (1908), 42 N. S. 28.

[56—57. Are repealed.]

**Register of members, where kept, open to inspection. Copy to be furnished.**

**Penalty. 58.** [As amended by Acts, 1904, c. 23, § 3.] The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned. Except when closed as hereinafter mentioned, it shall, during business hours, but subject to such reasonable restrictions as the company in general meeting imposes (so that no less than two hours in each day is appointed for inspection,) be open to the inspection of any member gratis, and to the inspection of any other person on the payment of twenty-five cents, or such less sum as the company prescribes for each inspection; and every such member or other person may require a copy of such register, or of any part thereof, on payment of twenty-five cents for every hundred words required to be copied. If such inspection or copy is refused, the company shall, for each refusal, upon summary conviction, be liable to a penalty not exceeding ten dollars, and a further penalty not exceeding ten dollars for every day during which such refusal continues; and every director, manager, secretary, or other officer of the company who knowingly authorizes or permits such refusal shall, upon summary conviction, be liable to the like penalty; and in addition to the above penalty the Court may, by summary order, compel an immediate inspection of the register.

<sup>a</sup> Imp. § 30.

**Closing of register. 59.** Any company under this Chapter may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Imp. § 31.

**Remedy for improper entry or omission in register. Power of Court to decide on question raised. 60. 1.** If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this Chapter, or if default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may apply for an order of the Court that the register may be rectified, and the Court may either refuse such application, with or without costs to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion or application, and any damages the party aggrieved may have sustained. **2.** The Court in any proceeding under this section may decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the Court may in any such proceeding decide any question that it is necessary or expedient to decide for the rectification of the register. Provided that the Court or Judge may direct an issue to be tried in which any question of law may be raised, and an appeal shall lie.

Imp. § 32.

**Notice to Registrar of rectification of register. 61.** Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the Registrar, the Court shall by its order, direct that due notice of such rectification be given to the Registrar.

Imp. § 32.

**Register to be evidence. 62.** The register of members shall be prima facie evidence of any matters by this Chapter directed or authorized to be inserted therein.

Imp. § 33.

**Where capital divided into shares has been converted into stock. 63.** Where any company under this Chapter, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all the provisions of this Chapter which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member in the list, instead of the amount of shares and the particulars relating to shares hereinbefore required.

Imp. § 43.

*Liability of members.*

**What liability share deemed to carry. 64.** Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract duly made in writing and filed with the Registrar at or before the issue of such shares.

**Executor, administrator, guardian, or trustee not personally subject to liability as shareholder. 65.** No person holding stock in the company as executor, administrator, guardian, or trustee, of or for any person named in the books of the company as being so represented by him, shall be personally subject to any liability as a shareholder, but the estate and funds in his hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such fund would be if living and competent to hold the stock in his own name, and if the trust is for a living person, such person shall also, himself, be liable as a shareholder; but if such testator, intestate, ward, or person so represented is not so named in the books of the company, the executor, administrator, guardian, or trustee shall be personally liable in respect to such stock as if he held it in his own name as owner thereof.

**Persons holding shares, etc., as collateral security, not subject to liability as shareholder. 66.** No person holding shares, stock, or other interest as collateral security, shall be personally subject to liability as a shareholder; but the person pledging such shares, stock, or other interest as collateral security shall be considered as holding the same, and shall be liable as a shareholder in respect thereto.

R. S., 79, § 49.

**Liability of shareholders, etc., in case of winding up. 67.** In the event of a company formed under this Chapter being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up and for the payment of such sums as are required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, that is to say: 1. No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up; 2. No past member shall be liable to contribute in respect to any debt or liability of the company contracted after the time at which he ceased to be a member; 3. No past member shall be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Chapter; 4. In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect to which he is liable as a present or past member; 5. In the case of a company limited by guarantee no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association; 6. Nothing in this Chapter contained shall invalidate any provision contained in any contract whereby the liability of individual members upon any such contract is restricted or whereby the funds of the company are alone made liable in respect to such contract; 7. No sum due to any member of a company in his character of a member by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for purpose of the final adjustment of the rights of the contributories among themselves.

Imp. § 123.



**Adjustment of calls and dividends. 68.** Nothing contained in this Chapter shall be deemed to prevent any company incorporated under this Chapter, if authorized by its regulations as originally framed, or as altered by special resolution, from doing any one or more of the following things, namely: 1. Making arrangement on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls. 2. Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect to any other share or shares held by him, or without any call having been made. 3. Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Imp. § 39.

**No dividend to be declared impairing capital. Liability of directors in such cases.**

**69.** 1. No dividend shall be declared which will impair the capital of the company. 2. If the directors of the company declare and pay any dividend when the company is insolvent, or any dividend the payment of which renders the company insolvent, or diminishes the capital stock thereof, they shall be jointly and severally liable, as well to the company as to the individual shareholders and creditors thereof, for all the debts of the company then existing, and for all thereafter contracted during their continuance in office, respectively; but if any director present when such dividend is declared does forthwith, or if any director then absent does within twenty-four hours after he becomes aware thereof and able so to do, enter on the minutes of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, then in a newspaper published in the city of Halifax, such director may thereby and not otherwise exonerate himself from such liability.

R. S., c. 79, § 60. In order to succeed in an action for deceit against a director of a company on the ground of a false representation involved in the declaration of a dividend which the profits of the company did not warrant it is necessary to show: first, that the declaration of the dividend was false and dishonest and not merely erroneous; secondly, that it was made with the intent that it should be acted upon by such persons as the plaintiff; and thirdly, that the plaintiff was materially induced by it to become a shareholder. — *Doyle v. Smith*, (1897), 40 N. S. 157.

#### *Preference shares.*

**Preference shares. 70.** 1. The directors of any company registered under this Chapter may, with the sanction of a special resolution of the company previously given in general meeting, create and issue any part of the capital as preference shares, giving the same such preference and priority as respect dividends and otherwise over ordinary shares as is declared by the special resolution. 2. The special resolution may provide that the holders of such preference shares shall have the right to select a certain stated proportion of the board of directors, or may give them such other control over the affairs of the company as is considered expedient. 3. Holders of such preference shares shall be shareholders within the meaning of this Chapter, and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of this Chapter. Provided however, that in respect to dividends and otherwise, they shall as against the original or ordinary shareholders be entitled to the preference given by any special resolution as aforesaid. 4. Nothing in this section shall affect or impair the rights of creditors of any company.

### *Part III. Management and Administration.*

#### *Registered office.*

**Registered office of company. 71.** Every company under this Chapter shall have a registered office within the Province, to which all communications and notices may be addressed. If any company under this Chapter carries on business without having such an office, it shall, upon conviction, be liable to a penalty not exceeding twenty-five dollars for every day during which business is carried on.

Imp. § 62,

**Notice of situation. 72.** Notice of the situation of such registered office, and of change therein, shall be given to the Registrar, and recorded by him. Until such

notice is given, the company shall not be deemed to have complied with the provisions of this Chapter with respect to having a registered office.

Imp. § 62.

*Provisions for the protection of creditors.*

**Publication of name by a limited company. 73.** Every limited company under this Chapter, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name, with the word "limited," or some contraction thereof, as the last word thereof, on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraved in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

Imp. § 63.

**Penalties for non-publication of name. 74.** If any limited company under this Chapter does not paint or affix, and keep painted or affixed, its name in manner directed by this Chapter, it shall, upon summary conviction, be liable to a penalty not exceeding twenty-five dollars for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and every director or manager of the company who knowingly and wilfully authorizes or permits such default shall, upon summary conviction, be liable to the like penalty; and if any director, manager, secretary, or other officer of such company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid, or issues or authorizes the issue of any notes, advertisement or other official publication of such company, or signs or authorizes to be signed on behalf of such company, any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall, upon summary conviction, be liable to a penalty of two hundred and fifty dollars, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, order for money or goods for the amount thereof, unless the same is duly paid by the company.

Imp. § 63.

**Register of directors, etc. 75.** Every company under this Chapter shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar a copy of such register, and shall from time to time notify the Registrar of any change that takes place in such directors or managers.

Imp. § 75. The manager of a mine ordered material for the construction of a boarding house for the accommodation of men employed in connection with the mine. It was held (per Ritchie & Meagher, J.J.) that, the erection of the boarding house appearing to be necessary for the efficient operation of the mine, the manager had authority to bind the company; (per Graham, E. J. and Henry, J.) that the burden was on the plaintiff to show authority on the part of the manager to pledge the credit of the company. — *Miller v. Cochran Hill Gold Mining Co.*, (1896), 29 N. S. 304. The secretary of a company whose authority was limited to the acceptance of drafts has no power to bind the company by an endorsement made for the accommodation of a third party. *Semble*, a company would be bound to a holder in due course of such accommodation paper. — *Union Bank v. Eureka Woolen Mfg. Co.*, (1900), 33 N. S. 302. Where an officer of a company is bound under the terms of his employment to render certain services without additional compensation, a payment by the directors of additional compensation is, in the absence of evidence of ratification by the shareholders, recoverable by the company. — *Rountree v. Sydney Land & Loan Co.*, (1907), 39 S. C. C. 614; affirming *Sydney Land & Loan Co. v. Rountree*, (1906), 42 N. S. 49. The statements of the president of a bank, not being *res gestae*, nor within the scope of his authority, are not evidence against the bank. — *Black v. Bank of Nova Scotia*, (1889), 21 N. S. 448. The president of a company has no greater powers to bind the company than any other director. — *Almon v. Law*, (1894), 26 N. S. 340. Provisional directors of a company do not have power to bind the company subsequently formed in a contract for the services of an employ. — *O'Dell v. Boston & Nova Scotia Coal Co.*, (1897), 29 N. S. 385.

**Penalty on company not keeping such register. 76.** If any company under this Chapter makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules,



or in notifying to the Registrar any change that takes place in such directors or manager, such company shall, upon summary conviction, be liable to a penalty not exceeding twenty-five dollars for every day during which such default continues, and every director, manager, secretary, or other officer of the company who knowingly and wilfully authorizes or permits such default shall, upon summary conviction, be liable to the like penalty.

Imp. § 75.

**Prohibition of carrying on business with less than three members. 77.** If any company under this Chapter carries on business when the number of its members is less than three for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than three members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member.

Imp. § 115.

*Legal proceedings.*

**Corporate name and proof of memorandum, etc., in actions and proceedings.**

**78.** In an action or other proceeding it shall not be requisite to set forth the mode of incorporation of the company otherwise than by mention of it under its corporate name, as registered under this Chapter, and the memorandum and articles of association of the company, or any exemplification or copy thereof certified under the hand and seal of the Registrar, shall be presumptive evidence of every matter and thing therein set forth.

R. S., c. 79, § 71.

**Proof of resolutions, etc. 79.** A copy of any resolution or special resolution of the company under its seal, and purporting to be signed by any officer of the company, or as to any special resolution filed with the Registrar a copy certified under his hand and seal, shall be received as prima facie evidence of such resolution or special resolution in any Court in the Province.

R. S., c. 79, § 33.

**Service on company of notices, etc. 80.** Any summons, notice, order, or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company at their registered office.

Imp. § 117.

**Service of documents, etc., by post. 81.** Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period, if any, prescribed for the service thereof: and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post office.

**Authentication of summons, etc., by company. 82.** Any summons, notice, order, or proceeding requiring authentication by the company may be signed by any director, secretary, or other authorized officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Imp. § 117.

**Minutes of resolutions and proceedings of general meetings and of directors and managers, how proved. 83.** Every company under this Chapter shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose: and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of directors, managers, and liquidators shall be deemed

to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that is afterwards discovered in their appointments or qualifications.

Imp. §§ 71, 74.

**In case assets of company deemed insufficient security for costs may be ordered.**

**84.** Where a company under this Chapter is plaintiff in any action or other legal proceeding, any Judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant is successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Imp. § 278.

**In actions for recovery of calls or for money due from member of company, what allegation sufficient.** **85.** In any action or suit brought by a company under this Chapter against any member to recover any call or other moneys due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company and is indebted to the company in respect to a call made or other moneys due whereby an action or suit has accrued to the company.

**Reference to arbitration.** **86.** Any company under this Chapter may, from time to time, by writing under its common seal, agree to refer and may refer to arbitration in accordance with *The Arbitration Act*, any existing or future difference, question or other matter whatsoever in dispute between itself and any other company or person; and any company party to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

Imp. § 119.

**Arbitration Act to apply.** **87.** All the provisions of *The Arbitration Act* shall be deemed to apply to arbitrations between any company and any person or between one company and another.

Imp. § 119.

*Contracts, borrowing powers, etc.*

**Contracts, borrowing powers, etc.** **88.** Contracts on behalf of any company incorporated under this Chapter may be made as follows, that is to say: 1. Any contract which, if made between private persons, would be by law required to be in writing, and if made according to the law of this Province, or of the Dominion of Canada, to be made under seal, may be made on behalf of the company, in writing, under the common seal of the company, and such contract may be in the same manner varied or discharged. 2. Any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged. 3. Any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be.

Imp. § 76.

**Power to mortgage, issue of debentures, etc.** **89.** 1. Every company under this Chapter shall have power, subject to the conditions of and in addition to all other powers conferred by this Chapter, to borrow money for the purpose of carrying out the objects of its incorporation, and to execute mortgages of its real and personal property, to issue debentures secured by mortgage or otherwise, to sign bills, notes, contracts, and other evidences of or securities for money borrowed or to be borrowed by it for the purpose aforesaid, and to pledge debentures as security for temporary loans. 2. [As amended by Acts, 1903, c. 18, § 3.] The power to execute mortgages of its real and personal property, and the power to issue debentures secured by mortgage or otherwise, shall not be exercised except with



the sanction of a special resolution of the company previously given in general meeting.

Imp §§ 93—103. The directors of a company have power to mortgage the property of the company to discharge obligations for which the shareholders are liable. The power to borrow money implies the power to mortgage. — In re Nash Brick & Pottery Mfg. Co. (1873), 9 N. S. 254.

**Power of attorney to execute deeds, etc.** 90. Any company under this Chapter may, by instrument in writing under its common seal, empower any person either generally or in respect to any specified matter, as its attorney, to execute deeds on its behalf, in any place situated within (or without) the limits of this Province; and every deed signed by such attorney on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

*Meetings and resolutions.*

**First general meeting, when held.** 91. Every company formed under this Chapter shall hold a general meeting within four months after its memorandum of association is registered; and if such meeting is not held the company shall upon summary conviction be liable to a penalty not exceeding twenty-five dollars a day for every day after the expiration of such four months until the meeting is held; and every director, manager, secretary, or other officer of the company, and every subscriber of the memorandum of association, who knowingly authorizes or permits such default shall, upon summary conviction, be liable to the like penalty.

Imp. § 65.

**General meeting to be held once in each year.** 92. A general meeting of every company under this Chapter shall be held once at the least in every year.

Imp. § 64.

**Special resolutions. Declaration of chairman. Notice of meeting.** 93 1. A resolution passed by a company under this Chapter shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote as are present, in person or by proxy (in cases where by the regulations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being, entitled, according to the regulations of the company, to vote as are present in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed. 2. At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. 3. Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given and the meeting held as prescribed by the regulations of the company. 4. In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company. 5. [Added by Acts, 1903, c. 19, § 1]. Notwithstanding anything hereinbefore contained a special resolution may be passed at any general meeting of the company upon a unanimous vote of all the shares of the company.

Imp. § 69.

**Mode of voting. General meeting, how summoned.** 94. In default of any regulations as to voting, every member shall have one vote; and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the first Schedule hereto; and in default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same; and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Imp. § 67.

**Copy of special resolution to be forwarded to Registrar and registered. Penalty in case of default. 95.** A copy of any special resolution that is passed by any company under this Chapter shall be printed and forwarded to the Registrar, and recorded by him. If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution the company shall, upon summary conviction, be liable to a penalty not exceeding ten dollars for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director, manager, secretary, or other officer of the company who knowingly and wilfully authorizes or permits such default shall, upon summary conviction, be liable to the like penalty.

Imp. § 70.

**Special resolution to be embodied in articles of association. 96.** When articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that is issued after the passing of such resolution. Where no articles of association have been registered a copy of any special resolution shall be forwarded in print to any member requesting the same, on payment of twenty-five cents, or such less sum as the company directs; and if any company makes default in complying with the provisions of this section it shall, upon summary conviction, be liable to a penalty not exceeding five dollars for each copy in respect to which such default is made; and every director, manager, secretary, or other officer of the company who knowingly and wilfully authorizes or permits such default shall, upon summary conviction, be liable to the like penalty.

Imp. § 70.

#### *Inspectors.*

**Governor-in-Council may appoint inspectors on application made. 97.** The Governor-in-Council may appoint one or more competent inspectors to examine into the affairs of any company under this Chapter, and to report thereon, in such manner as the Governor-in-Council directs, upon the applications following, that is to say: 1. In the case of any company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued; 2. In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

Imp. § 109.

**On what application to be based. 98.** The application shall be supported by such evidence as the Governor-in-Council requires for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same. The Governor-in-Council may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Imp. § 109.

**Officers and agents to produce books, etc., for inspection. 99.** It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power. Any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall, upon summary conviction, be liable to a penalty not exceeding twenty-five dollars in respect to each offence.

Imp. § 109.

**Report. Expenses. 100.** Upon the conclusion of the examination the inspectors shall report their opinion to the Governor-in-Council. A copy shall be forwarded by the Provincial Secretary to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them, or to any one or more of them. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Governor-in-Council directs the same to be paid out of the assets of the company, which he is hereby authorized to do.

Imp. § 109.



**Inspectors may be appointed by special resolution. 101.** Any company under this Chapter may by special resolution appoint inspectors for the purpose of examining into the affairs of the company. The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Governor-in-Council, with this exception, that instead of making their report to the Governor-in-Council they shall make the same in such manner and to such persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspector had been appointed by the Governor-in-Council.

Imp. § 110.

**Proof or admissibility of report in legal proceedings. 102.** A copy of the report of any inspectors appointed under this Chapter, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Imp. § 111.

*Company ceasing to carry on business.*

**Proceeding in case of company ceasing to carry on business. 103.** 1. Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation. 2. If the Registrar does not, within one month of sending the letter, receive any answer thereto, he shall, within fourteen days after the expiration of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received by the Registrar, and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Royal Gazette* with a view to striking the name of the company off the register. 3. If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive an answer thereto, the Registrar may publish in the *Royal Gazette* and send to the company a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register, and the company will be dissolved. 4. At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by such company, strike the name of such company off the register, and shall publish notice thereof in the *Royal Gazette*, and on the publication in the *Royal Gazette* of such last mentioned notice the company whose name is so struck off shall be dissolved; provided, that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved. 5. If any company or member thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section the company or member may apply to the Court, and the Court, if satisfied that the company was at the time of the striking off carrying on business or in operation, and that it is just so to do, may order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all persons in the same position as nearly as may be as if the name of the company had never been struck off. 6. A letter or notice authorized or required for the purposes of this section to be sent to a company may be sent by post addressed to the company at its registered office, or if no office has been registered, addressed to the care of some director or officer of the company, or if there is no director or officer of the company whose name and address are known to the Registrar the letter or notice (in identical form) may be sent to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in that memorandum.

Imp. § 242.

*Forms.*

**Forms. Power of Governor-in-Council to make alterations. Alteration, how published. Proviso. 104.** The forms set forth in the second Schedule hereto, or

forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer. The Governor-in-Council may from time to time make such alterations in the table and forms contained in the first Schedule hereto, and in the forms in the second Schedule, or make such additions to the last mentioned forms, as are requisite. Any such table or form when altered shall be published in the *Royal Gazette*, and upon such publication being made such table or form shall have the same force as if it was included in the Schedule to this Chapter; but no alteration made by the Governor-in-Council in the table marked A, contained in the first Schedule, shall affect any company registered prior to the date of such alteration, or shall repeal, as respects such company, any portion of such table.

Imp. § 118.

#### *Part IV. Prospectus. Liability of Directors and Promoters.*

##### *Prospectus.*

**Prospectus. Specific requirements as to particulars in prospectus. 105.** Every prospectus of the company, and every notice inviting persons to subscribe for shares in the company, shall specify the dates and the names of the persons to any contract entered into by the company or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company, or otherwise; and every prospectus or notice which does not specify the same shall, with respect to any person who takes shares in the company on the faith of such prospectus or notice, and who has not had notice of such contract, be deemed fraudulent on the part of the promoters, directors, and officers of the company who knowingly issue such prospectus or notice.

Imp. §§ 80—84. A statement in a prospectus that a "reserve fund existed" does not necessarily mean a reserve fund which has been invested, the important thing is the reserving of the amount out of property available for distribution in dividends and appropriating it in the books of the company to meet contingencies. A representation as to the proportion of profits earned in payment of dividends does not mean "paid." It is sufficient if the sum mentioned was appropriated or devoted to a particular purpose, although not payable until later. — *Kennedy v. Acadia Pulp & Paper Mills Co.*, (1905), 38 N. S. 291.

**Liability of directors for loss or damages sustained by subscribers by reason of untrue statements in prospectus. Provisos. Promoter, definition of. Expert, definition of. Cases where director not liable. 106. 1.** Where a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorized such naming of him, is named in the prospectus or notice as a director of the company, either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus or notice, shall be liable to pay compensation to all persons who subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved: a) With respect to every such untrue statement, not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe that the statement was true; and b) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation: Provided always, that, notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of an extract from the report or valuation, such director, person named, promoter, or other person who authorized the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid, if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and c) With respect to every such untrue statement purporting to be a statement made by an official person, or contained in what purports to be a copy of or extract from



a public official document, that it was a correct and fair representation of such statement, or a copy of or extract from such document. Or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal and of the reason therefor to be given. 2. A promoter in this section and the next preceding section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of a company. 3. In this section the word "expert" includes any person whose profession gives authority to a statement made by him. 4. Where any company existing at the passing of this Chapter, which has issued shares or debentures, is desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose issues a prospectus or notice, no director of such company shall be liable in respect to any statement therein, unless he has authorized the issue of such prospectus or notice, or has adopted or ratified the same.

Imp. §§ 80—84.

**Liability of directors and others to indemnify person named as director in a prospectus who has refused or withdrawn consent. 107.** When any such prospectus or notice as aforesaid contains the name of a person as a director of the company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, or has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorized the issue of such prospectus or notice, shall be liable to indemnify the person named as director of the company, or as having agreed to become a director thereof as aforesaid, against all damages, costs, charges, and expenses to which he is made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereto.

Imp. §§ 80—84.

**Director or person named as director entitled to recover contribution in certain cases. 108.** Every person, who by reason of his being a director or named as a director, or as having agreed to become a director, or, of his having authorized the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Chapter, shall be entitled to recover contribution, as in case of contract, from any other person, who if sued separately would have been liable to make the same payment.

Imp. §§ 80—84.

### *Part V. Application of Chapter to Existing Companies.*

**Application of Chapter to existing companies. 109.** Any joint stock company at any time before the thirtieth day of March, A. D., 1900, incorporated by a special Act of the legislature of Nova Scotia, or by letters patent issued under the provisions of *The Nova Scotia Joint Stock Companies' Act*, being Chapter 79 of the Revised Statutes, fifth series, may apply by petition to the Governor-in-Council for a certificate of incorporation as a company limited by shares under this Chapter.

**Resolution to be passed before presenting petition. 110.** Before such petition is presented a resolution authorizing the same shall be passed at a meeting regularly called for such purpose by a majority of not less than three-fourths of the members of the company present in person or by proxy in cases in which proxies are allowed by the regulations and by-laws of the company.

**Prayer may embody in petition that Governor-in-Council will by such certificate extend powers of company. Increase of capital stock, etc. Further powers. 111.** Such resolution may also authorize the embodying in the petition of a prayer that the Governor-in-Council will by such certificate: a) Extend the powers of the company, and the purposes for which the same is incorporated; or b) Increase the capital stock

of the company; or c) Make provision for any other matter or thing in respect to which provision might be made on an original application for incorporation under this Chapter.

**Documents to accompany petition. Copy of statute, letters patent, etc. Nominal capital, etc. Names of members, etc. Amount of bonds. 112.** Such petition shall be accompanied by the following documents, verified by a statutory declaration by the president, secretary, or other officer of the company: 1. A copy of the statute, or letters patent, or other instrument under which the company is incorporated; 2. A statement showing the nominal capital of the company, the number of shares into which it is divided, the number of shares taken, and the amount paid on each share; 3. A list showing the names, addresses, and occupations of all persons who on a day named in such list, and not being more than six clear days before the date of application, were members of the company, with the addition of the shares held by such persons respectively, distinguishing in cases in which shares are numbered each share by its number; 4. The amount of any bonds or debentures issued by the company, the number of such bonds or debentures, and the amount of each one of the same.

**Issue of certificate by Registrar. 113.** Upon receipt of such petition and other documents the Governor-in-Council may direct the Registrar to issue to the company a certificate of incorporation under this Chapter, stating the purposes for which the company is incorporated and the amount of capital of the company divided into shares of a certain amount, and thereupon such company shall be incorporated in like manner as if application for the incorporation thereof had been made under this Chapter, and the company shall be registered as a company under this Chapter.

**Effect of certificate of incorporation. 114.** A certificate of incorporation given at any time to any company registered in pursuance of this part of this Chapter shall be conclusive evidence that all the requisitions herein contained in respect to registration under this Chapter have been complied with, and that the company is authorized to be registered under this Chapter as a limited company, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Chapter.

**All property, real and personal, to pass or vest. 115.** All such property, real and personal, including all interests and rights in, to, and out of property, real and personal, and including obligations and things in action as belong to or are vested in the company at the date of its registration under this Chapter, shall on registration pass to and vest in the company as incorporated under this Chapter for all the estate and interest of the company therein.

**Existing rights, etc., not affected. 116.** The registration in pursuance of this part of this Chapter of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred or any contract entered into by, to, with, or on behalf of such company previously to such registration.

**Actions, etc., to be continued. 117.** All such actions, suits, and other legal proceedings as at the time of the registration of any company registered in pursuance of this part of this Chapter have been commenced by or against such company or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of an individual member of such company upon any judgment, decree, or order obtained in any action, suit, or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding up the company.

**Provisions contained in statute deemed conditions of company. Provisos. Table A shall not apply, unless adopted by resolution. Numbering of shares. Not to alter statute, etc. Not to alter provisions in letters patent. Provision in case of company being wound up. Further provisions respecting alteration of statute, etc. 118.** When an existing company is registered under this Chapter in pursuance of this part thereof, except as is otherwise provided by the certificate of incorporation, all provisions contained in any statute, letters patent, or other instrument constituting or regulating the company, shall be deemed to be conditions and regulations of the company in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Chapter shall apply to such company and the members, con-



tributories and creditors thereof in the same manner and in all respects as if it had been formed under this Chapter, subject to the provisions following, that is to say: 1. That table A in the first Schedule to this Chapter shall not, unless adopted by special resolution, apply to any company registered under this Chapter in pursuance of this part thereof; 2. That the provisions of this Chapter relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered; 3. That no company shall have power to alter any provision contained in any statute relating to the company; 4. That no company shall have power, without the sanction of the Governor-in-Council, to alter any provision contained in any letters patent relating to the company; 5. That in the event of the company being wound up, every person shall be a contributory in respect to the debts and liabilities of the company contracted prior to registration, who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect to any such debt or liability, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company so far as relates to such debts or liabilities as aforesaid, and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect to any such liability as aforesaid, and in the event of the death or insolvency of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions in this chapter contained with respect to the representatives, heirs, and devisees of deceased contributories, and with reference to the assignees of insolvent contributories, and to the husbands of married contributories, shall apply; 6. That nothing herein contained shall authorize any company to alter any such provisions contained in any statute, letters patent, or other instrument constituting or regulating the company as would, if such company had originally been formed under this Chapter, have been contained in the memorandum of association, and are not authorized to be altered by this Chapter. But nothing herein contained shall derogate from any power of altering its constitution or regulations which is vested in any company registering under this Chapter in pursuance of this part thereof by virtue of any statute, letters patent or other instrument constituting or regulating the company.

See *Modstock Mining Co. v. Harris*, (1902), 40 N. S. 336.

**Commissions for subscriptions to shares. 119.** [Added by Acts, 1903, c. 18, § 1.]

1. It shall be lawful for any company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or for procuring or agreeing to procure subscriptions for any shares in the company, if such commission paid or agreed to be paid does not exceed ten per cent. of the price at which such shares are sold. 2. Save as aforesaid, no company shall apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discounts, or allowances to any person in consideration of his subscribing, or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolutely or conditionally, for any shares of the company, whether the shares or moneys be so applied by being added to the purchase money of any property acquired by the company, or to the contract price of any work to be executed for the company, or the money being paid out of a nominal purchase money or contract price, or otherwise. 3. The provisions of this section shall apply to every company heretofore incorporated, or that may hereafter be incorporated, and all commissions heretofore paid out of capital account or income for underwriting which would have been legal and valid under the provisions of this section if the same had then been in force are legalized, and declared to be and to have been legal and valid.

*First Schedule.*

**Table A. Regulations for management of a company limited by shares.**

*Shares.*

1. If several persons are registered as joint holders of any shares, any one of such persons may give effectual receipts for any dividend payable in respect to such shares.

2. Every member shall, on payment of twenty-five cents, or such less sum as the company in general meeting prescribes, be entitled to a certificate under the common seal of the company, specifying the share or shares held by him and the amount paid thereon.

3. If such certificate is worn out or lost, it may be renewed on payment of twenty-five cents, or such less sum as the company in general meeting prescribes, upon indemnifying the company against any loss or damage in case of the certificate so lost being found, and upon such terms or conditions as the company prescribes.

*Calls on shares.*

4. The directors may from time to time make such calls upon the members in respect to all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons, and at the times and places, appointed by the directors.

5. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the same is passed.

6. If the call payable in respect to any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent. per annum from the day appointed for payment thereof to the time of the actual payment.

7. The directors may if they see fit receive from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect to which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

*Transfer of shares.*

8. The instrument of transfer of any share in the company shall be executed both by the transferor and the transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereto.

9. Shares in the company shall be transferred in the following form:

I, A. B., of \_\_\_\_\_ in consideration of the sum of \_\_\_\_\_ dollars paid to me by C. D., of \_\_\_\_\_ do hereby transfer to the said C. D., the share (or shares) numbered \_\_\_\_\_ standing in my name in the books of the \_\_\_\_\_ company, to hold unto the said C. D., his executors, administrators, and assigns, subject to the several conditions on which I hold the same at the time of the execution hereof; and I, the said C. D., do hereby agree to take the said share (or shares) subject to the same conditions. As witness our hands, the \_\_\_\_\_ day of \_\_\_\_\_

10. The company may decline to register any transfer of shares made by a member who is indebted to the company.

11. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

*Transmission of shares.*

12. The executors or administrators of a deceased member shall be the only person recognized by the company as having any title to his share.

13. Any person becoming entitled to a share in consequence of the death or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as is from time to time required by the company.

14. Any person who has become entitled to a share in consequence of the death or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person, to be named by him, registered as a transferee of such share.

15. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

16. The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

*Forfeiture of shares.*

17. If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with interest and any expenses that have accrued by reason of such non-payment.

18. The notice shall name a further day on or before which such call, and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). The notice shall also state that in the event of non-payment at or before the time and at the place appointed, the shares in respect to which such call was made will be liable to be forfeited.

19. If the requisitions of any such notice as aforesaid are not complied with, any share in respect to which such notice has been given may, at any time thereafter, before payment of all calls, interest and expenses due in respect thereto has been made, be forfeited by a resolution of the directors to that effect.



20. Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

21. Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

22. A statutory declaration, in writing, that the call in respect to a share was made and notice thereof given and that default in payment of the call was made, and that the forfeiture of share was made by resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share; and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and the certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

#### *Increase in capital.*

23. The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

24. Subject to any direction to the contrary that is given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting the time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

25. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of the calls and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

#### *General meetings.*

26. The first general meeting shall be held at such time, not being more than four months after the registration of the company, and at such place, as the directors determine.

27. [As amended by Acts, 1904, c. 23, § 5.] Subsequent general meetings shall be held at such time and place as are prescribed by the company in general meeting; and if no other time or place is prescribed a general meeting shall be held on the third Tuesday in February in every year, at such place as is determined by the directors.

28. The above mentioned general meetings shall be called ordinary meetings; all other meetings shall be called extraordinary.

29. The directors may whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

30. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

31. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

#### *Proceedings at general meetings.*

32. Seven days' notice at least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as is prescribed by the company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

33. All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance sheets, and the ordinary report of the directors.

34. No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows, that is to say: If the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

35. If within one hour from the time appointed for a meeting a quorum is not present the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place; and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*.

36. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

37. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

38. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

39. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of the proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

40. If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

#### *Votes of members.*

41. Every member shall have one vote for every share.

42. If any member is a lunatic or idiot, he may vote by his guardian.

43. If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect to the same.

44. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect to any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect to which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

45. Votes may be given either personally or by proxy.

46. The instrument appointing a proxy shall be in writing, under the hand of the appointer, or if such appointer is a corporation, under its common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the company.

47. The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

48. Any instrument appointing a proxy shall be in the following form:

The \_\_\_\_\_ company, limited.  
 I, \_\_\_\_\_ of \_\_\_\_\_ in the county of \_\_\_\_\_ being a member  
 of the \_\_\_\_\_ company, limited, and entitled to \_\_\_\_\_ vote (or votes)  
 hereby appoint \_\_\_\_\_ of \_\_\_\_\_ as my proxy, to vote for me and on my behalf  
 at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held  
 on the \_\_\_\_\_ day of \_\_\_\_\_ and at an adjournment thereof (or at any meeting  
 of the company that is held in the year \_\_\_\_\_).

As witness my hand, this \_\_\_\_\_ day

#### *Directors.*

49. The number of directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

50. Until directors are appointed the subscribers of the memorandum of association shall be deemed to be directors.

51. The future remuneration of the directors and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

#### *Powers of directors.*

52. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by "The Nova Scotia Companies' Act," or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as is prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

53. The continuing directors may act notwithstanding any vacancy in their body.

#### *Disqualification of directors.*

54. The office of director shall be vacated: If he holds any other office or place of profit under the company; If he becomes bankrupt or insolvent; If he is concerned in or participates in the profits of any contract with the company.



But the above rules shall be subject to the following exceptions:

That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; nevertheless he shall not vote in respect to such contract or work, and if he does so vote his vote shall not be counted.

*Rotation of directors.*

55. At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

56. The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot; in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

57. A retiring director shall be re-eligible.

58. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

59. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

60. The company may from time to time in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

61. Any casual vacancy occurring in the board of directors may be filled up by the directors; but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

62. The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

*Proceedings of directors.*

63. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

64. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

65. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that are imposed on them by the directors.

66. A committee may elect a chairman of their meeting. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

67. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

68. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

*Dividends.*

69. The directors may, with the sanction of the company in general meeting, declare a dividend, to be paid to the members in proportion to their shares.

70. No dividend shall be payable except out of the profits arising from the business of the company.

71. The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserve fund upon such securities as they select.

72. The directors may deduct from the dividends payable to any member all such sums of money as are due from him to the company on account of calls or otherwise.

73. Notice of any dividend that has been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

74. No dividend shall bear interest as against the company.

#### *Accounts.*

75. The directors shall cause true accounts to be kept: a) Of the stock-in-trade of the company; b) Of the sums of money received and expended by the company, and the matter in respect to which such receipt and expenditure takes place and c) Of the credits and liabilities of the company.

The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that are imposed by the company in general meeting, shall be open to the inspection of the members during hours of business.

76. Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

77. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the additions of the reasons why only a portion of such expenditure is charged against the income of the year.

78. A balance sheet shall be made out in every year, and laid before the company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

79. A printed copy of such balance sheet shall, seven days previously to such meeting, be served on every member in manner in which notices are hereinafter directed to be served.

#### *Audit.*

80. Once at least in every year the accounts of the company shall be examined, and the correctness of the balance sheet ascertained, by one or more auditor or auditors.

81. The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the company in general meeting.

82. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

83. The auditors may be members of the company, but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.

84. The election of auditors shall be made by the company at the ordinary meeting in each year.

85. The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

86. Any auditor shall be re-eligible on his quitting office.

87. If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

88. If no election of auditors is made in the manner aforesaid the Governor-in-Council may, on application of not less than five members of the company, appoint an auditor for the ensuing year and fix the remuneration to be paid to him or the company for his services.

89. Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

90. Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company. He may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the company.

91. The auditors shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet containing the particulars required by these regulations and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such information or explanations have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.



## Capital and Liabilities.

## Property and Assets.

Capital and Liabilities.		\$		\$	Property and Assets.
I. Capital . . . . .	1	Showing: The number of shares.			7
	2	The amount per share.			
	3	If any arrears of calls, the nature of the arrears and the names of the defaulters.			
	4	The particulars of any forfeited shares.			
II. Debts and Liabilities of the Company.	5	Showing: The amount of loans on mortgages or debenture bonds.			8
	6	The amount of debts owing by the company, distinguishing: a) Debts for which acceptances have been given;			
		b) Debts to tradesmen for supplies of stock in trade or other articles;			
		c) Debts for law expenses;			
VI. Reserve Fund . . . . .		d) Debts for interests on debentures or other loans;			9
		e) Unclaimed dividends;			
		f) Debts not enumerated above.			
		Showing: The amount set aside from profits to meet contingencies.			
VII. Profit and Loss . . . . .		Showing: The disposable balance for payment of dividend, etc.			10
Contingent Liabilities . . . . .		Claims against the company not acknowledged as debts.			11
		Moneys for which the company is contingently liable.			
					12
					13

Showing:  
Immovable property, distinguishing:  
a) Freehold land.  
b) Freehold buildings.  
c) Leasehold buildings.

Movable property, distinguishing:  
d) Stock in trade.  
e) Plant.

The cost to be stated, with deductions for deterioration in value, as charged to the reserve fund of profit and loss.

Showing:  
Debts considered good for which the company hold bills or other securities.

Debts considered good for which the company holds no security. Debts considered doubtful and bad.

Any debt due from a director or other officer of the company to be separately stated.

Showing:  
The nature of investment and rate of interest.

The amount of cash, where lodged, and if bearing interest.

*Notices.*

92. A notice may be served by the company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

93. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

94. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

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**Table B. Table of fees to be paid to the Registrar of Joint Stock Companies by a company having a capital divided into shares.<sup>1)</sup>**

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**Table C. Table of fees to be paid to the Registrar of Joint Stock Companies by a company not having a capital divided into shares.**

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*Second Schedule.*

(Contains forms identical in all material respects with those contained in the Imperial Companies Act, 1862, 25 & 26 Vic. c. 89.)

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### c) Rev. St. 1900, c. 129. Of the Winding-up of Incorporated Companies.

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*Short title.*

**Short title.** 1. This Chapter may be cited as *The Companies' Winding-Up Act*.

*Interpretation.*

**Interpretation of terms.** 2. 1. In this Chapter unless the context otherwise requires: a) The expression "Court" means the Supreme Court of Nova Scotia; but any act hereinafter authorized to be done by the Court, and any power or authority hereinafter conferred on the Court, shall be done or exercised by any Judge thereof, except in the case of acts and authorities to be done or exercised upon or after appeal from the decision or judgment of such Judge; b) The expression "contributory" means every person liable to contribute to the assets of a company, association, or club, in the event of the same being wound up; it shall also, in all proceedings prior to the final determination of the status of such persons, include any person alleged to be a contributory; c) The expression "company" means any corporation, whether joint stock or otherwise, incorporated by the legislature of this Province, or under the authority of any statute thereof; d) The expression "extraordinary resolution" means a resolution passed by a majority of not less than three-fourths of the members of the company for the time being entitled to vote present in person or by proxy (in cases where by the Act, charter, or instrument of incorporation, or the regulations of the company, proxies are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given; e) The expression "special resolution" means a resolution passed in the manner necessary for an extraordinary resolution, where the resolution, after having been so passed as aforesaid, has been confirmed by a majority of the members entitled according to the Act, charter, or instrument of incorporation, or the regulations of the company to vote present in person or by proxy at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, or more than one month, from the date of the meeting at which the resolution was first passed.

R. S., c. 80, § 3.

*Application.*

**Application of Chapter.** 3. 1. This Chapter shall apply to all incorporated companies, associations, or clubs, incorporated by the legislature of Nova Scotia, or under the authority of any statute, and to all companies, associations, and clubs, whose incorporation and the affairs thereof in the particulars hereinafter mentioned

<sup>1)</sup> Amended by Acts, 1904, c. 23, § 3.



are subject to the legislative authority of this Province. 2. It shall not apply to any company or corporation whose Act of incorporation or any Act in amendment thereof contains express provisions for the mode of winding up such company or association.

R. S., c. 80, §§ 2, 84.

*When companies may be wound up.*

**Companies may be wound up. Expiration of time. Special resolution. Extraordinary resolution.** 4. A company may be wound up under this Chapter: a) Where the period (if any) fixed for the duration of the company by the Act, charter, or instrument of incorporation thereof has expired, or where the event (if any) has occurred, upon the occurrence of which it is provided by such Act, or charter, or instrument of incorporation that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up; b) Where the company has passed a special resolution requiring the company to be wound up; c) When the company (though it is solvent as respects creditors) has passed an extraordinary resolution to the effect that it has been proved to the satisfaction of the members thereof that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same.

R. S., c. 80, § 4.

**Court may order winding up.** 5. Where no such resolution has been passed, the Court may on the application of a contributory make an order for winding-up, in case the Court is of opinion that it is just and equitable that the company should be wound up.

R. S., c. 80, § 5.

**When winding-up shall commence.** 6. A winding-up shall be deemed to commence: a) In case of the passage of a resolution authorizing the winding-up, at the time of the passing of such resolution; b) In case of the making of an order directing the winding-up, from the making of such order.

R. S., c. 80, § 6.

*Registration of the resolution or order.*

**Resolution or order to be registered.** 7. A copy of the resolution or order for winding up, certified by the liquidator, may be registered in the registry of deeds of any registration district in which the company has any real property. Such resolution or order may be accompanied by a description of the real property belonging to the company in the district, and certified by the liquidator to be a correct description; and the Registrar shall register the said order and description upon payment to him of a fee of one dollar.

R. S., c. 80, § 7.

*Consequences of commencing to wind up.*

**Consequences of commencing.** 8. The following consequences shall ensue upon the commencement of the winding-up of a company: a) The company shall from the date of the commencement of such winding-up cease to carry on its business, except in so far as is required for the beneficial winding-up thereof, but the corporate status and all the corporate powers of the company shall, notwithstanding it is otherwise provided by the Act, charter, or instrument of incorporation, continue until the affairs of the company are wound up; b) The property of the company shall be applied in satisfaction of its liabilities, and subject thereto and to the charges incurred in winding up its affairs, shall (unless it is otherwise provided by the Act, charter, or instrument of incorporation) be distributed amongst the members according to their right and interests in the company; c) Any transfers of shares, except transfers made to or with the sanction of the liquidators, or any alteration in the status of the members of the company, after the commencement of such winding-up, shall be void; d) No action, suit, or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court, and subject to such terms as the Court imposes; e) All costs, charges, and expenses properly incurred in the winding-up of a company under this Chapter, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

R. S., c. 80, § 8.

*Appointment of liquidators.*

**Appointment of liquidator by company.** 9. 1. In case of a resolution for winding up, the company at a general meeting shall appoint a person or persons to be liqui-

dator or liquidators for the purpose of winding up the affairs of the company and distributing its property, and shall fix the remuneration to be paid to him or them, and such liquidators shall furnish such security as the contributories determine. 2. In case of an order authorizing a winding-up, the Court shall appoint such liquidators and determine the security and the remuneration. 3. If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him. 4. Where several liquidators are appointed every power hereby given may be exercised by such one or more of them as is determined at the time of the appointment, or at a subsequent meeting, or in default of such determination by any number not less than two.

R. S., c. 80, § 8.

**Vacancies, how filled.** 10. If any vacancy occurs in the office of liquidator appointed by the company, by death, resignation, or otherwise, the company in general meeting may fill up such vacancy. If from any cause there is no liquidator acting, either provisionally or otherwise, the Court may on the application of a contributory appoint a liquidator or liquidators. The Court may also on due cause shewn remove any liquidator and appoint another liquidator. When there is no liquidator the estate shall be under the control of the Court until the appointment of a new liquidator.

R. S., c. 80, § 66.

**Liquidators' commission.** 11. If there is no agreement, order, or provision fixing the remuneration of a liquidator, he shall be entitled to a commission on the net proceeds of the estate of the company of every kind which comes to his hands, after deducting expenses and disbursements; such commission to be five per cent. on the amount realized, and to be in full of all fees and charges for his services.

R. S., c. 80, § 41.

**Powers of directors to cease.** 12. Upon the appointment of liquidators all the powers of the directors or other managing officers shall cease, except in so far as the company in general meeting or the liquidators sanction the continuance of such powers.

R. S., c. 80, § 8.

**Disposal of property regulated.** 13. The contributories may at any meeting pass any resolution or order directing the liquidator how to dispose of the property, real or personal, of the company, and in default of their doing so the liquidator shall be subject to the directions, orders, and instructions which he from time to time receives from the inspectors, if any, with regard to the mode, terms, and conditions on which he may dispose of the whole or any part of the property of the company.

R. S., c. 80, § 8.

#### *Inspectors.*

**Inspectors may be appointed.** 14. 1. The contributories may at any meeting appoint one or more inspector or inspectors to superintend and direct the proceedings of the liquidator in the management and winding up of the estate, and in case of an inspector being appointed all the powers of the liquidators shall be exercised, subject to the advice and direction of the inspector. 2. The contributories may also, at any subsequent meeting held for that purpose, revoke any such appointment, and upon such revocation, or in case of death, resignation, or absence from the Province of an inspector, may appoint another in his stead. 3. Such inspector may be paid such remuneration as the contributories determine, and when anything is allowed or directed to be done by the inspectors, it may or shall be done by the sole inspector if only one has been appointed.

R. S., c. 80, § 8.

#### *General powers of liquidators.*

**Liquidator, how described, and powers.** 15. The liquidator may be described in all proceedings by the style of "A. B., the liquidator of" (the particular company in respect to which he is appointed) and shall have power to do the following things: a) To bring or defend any action, or other legal proceeding in the name and on behalf of the company; b) To carry on the business of the company so far as is necessary for the beneficial winding-up of the same; c) To sell the real and personal property of the company, by public auction or private contract, according to the ordinary mode in which such sales are made, with power to transfer the whole property to any person or company, or to sell the same in parcels, and on such terms as seem most advantageous; but no sale of the assets en bloc shall be made without



the previous sanction of the contributories given at a meeting called for that purpose; d) To draw, accept, make, and endorse any bill of exchange or promissory note, in the name and on behalf of the company, and to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making, or endorsing of any such bill of exchange or promissory note as aforesaid, on behalf of the company, shall have the same effect with respect to the liability of the company as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf of such company in the course of carrying on the business thereof; e) To take out if necessary, in his official name, letters of administration to any deceased contributory; and to do in his official name any other act which is necessary for obtaining payment of any money due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration or otherwise uses his official name for obtaining payment of any money due from a contributory, such money shall, for the purpose of enabling him to take out such letters or recover such money, be deemed to be due to the liquidator himself; f) To execute in the name of the company all deeds, receipts, and other documents; g) To use the company's seal whenever necessary for any of the purposes mentioned in this section; and h) To do and exercise all other acts and things necessary for the winding-up of the affairs of the company, and the distribution of its assets.

R. S., c. 80, § 9. A sale by the liquidators of a company in process of winding-up made, under authority of a judge's order, of the company's assets to a director of the company being wound up is valid, the reasons against such acts where the directors are actively engaged in administering the affairs of the company no longer existing. — *In re Mabou Coal & Gypsum Co.*, (1894), 27 N. S. 305.

**To sell doubtful debts. 16.** If after having acted with due diligence in the collection of the debts, the liquidator finds that there remain debts due, the attempt to collect which would be more onerous than beneficial to the estate, he shall report the same to the contributories or inspector (if any), and with their sanction he may sell the same by public auction after such advertisement thereof as they order; and pending such advertisement the liquidator shall keep a list of the debts to be sold, upon inspection at his office, and shall also give free access to all documents and vouchers explanatory of such debts; but all debts amounting to more than one hundred dollars shall be sold separately.

R. S., c. 80, § 9 (4).

**Debts may be compromised. 17.** The liquidators may with the sanction of an extraordinary resolution of the company compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding-up of the company, upon the receipt of such sums, payable at such times and generally upon such terms as are agreed upon; with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give a complete discharge in respect to all or any such calls, debts, or liabilities.

R. S., c. 80, § 12.

#### *Proof of claims.*

**Proof of claims, procedure. 18.** The liquidator shall apply to the Court for an order fixing the time within which creditors of the company and other persons having claims thereon are to send in their claims, and within what time notice thereof shall be given. Such notice may be by advertisement, and the procedure upon such application and the proof of such claims and the settlement of the list thereof shall as nearly as may be, be that prescribed in the rules of the Supreme Court, "Of advertisements for creditors and claimants," and the duties of the liquidator shall as nearly as may be, be those in such rules prescribed for executors and administrators.

R. S., c. 80, § 10.

**Payment of claims. 19. 1.** When the liquidator has given such notice and complied with the directions of the Court respecting the settlement of such list of claims, he may, at the expiry of the time limited for the sending in of such claims and the proof thereof, distribute the assets of the company, or any part thereof among the persons thereto entitled who have sent in their claims as required. **2.** The

liquidator shall not be liable for the assets or any part thereof so distributed to any person of whose claim such liquidator had not notice at the time of distributing the assets or a part thereof, as the case may be; but nothing in this Chapter shall prejudice the right of any creditor or claimant to follow assets into the hands of any person who has received the same.

R. S., c. 80, § 10.

**Compromises may be made.** 20. The liquidators may, with the sanction of an extraordinary resolution of the company, make such compromise or other arrangement as the liquidators deem expedient with any creditors, or persons claiming to be creditors, or persons having or alleging to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

R. S., c. 80, § 11.

*Transfer to another company.*

**Transfer of property of company.** 21. When any company is proposed to be or is in the course of being wound up, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect to any particular arrangement, may receive in compensation, or in part compensation, for such transfer or sale, shares or other like interest in such other company for the purpose of distribution amongst the members of the company which is being wound up, or may in lieu of receiving cash, shares, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company.

R. S., c. 80, § 13.

**Dissentient member. Special resolution.** 22. 1. Any sale made or arrangement entered into by the liquidators in pursuance of the next preceding section shall be binding on the members of the company which is being wound up, provided, that if any member of the company which is being wound up, who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution, in writing, addressed to the liquidators or one of them, and left at the head office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators prefer, that is to say: 1. Either to abstain from carrying such resolution into effect; or, 2. To purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as is determined by special resolution. 2. No special resolution shall be deemed invalid for the purposes of this and the next preceding section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company or for appointing liquidators.

R. S., c. 80, §§ 14, 15.

**Price of interest fixed.** 23. If the price to be paid for the interest of any such dissentient member cannot be determined by agreement it may upon the application of the liquidator be determined by a referee appointed by the Court.

R. S., c. 80, § 16.

*Liability of contributories.*

**List of contributories, settlement of.** 24. 1. As soon as may be after the commencement of the winding-up the liquidator shall prepare a list of contributories.

R. S., c. 80, § 20.

**Liability of contributories.** 25. Every shareholder or member of the company or his representative shall be liable to contribute the amount unpaid on his share of the capital or on his liability to the company or to its members or creditors, as the case may be, under the Act, charter, or instrument of incorporation of the company or under the law of this Province, and the amount which he is liable to contribute shall be deemed assets of the company and to be a debt due to the company.

R. S., c. 80, § 21.

**Transferred shares.** 26. When a shareholder has transferred his shares under circumstances which do not by law free him from liability in respect thereto, or



where he is by law liable to the company or its contributories or any of them, to an amount beyond the amount unpaid on his shares, or when a member of a company, the liability of whose members is not limited by the Act, charter, or instrument of incorporation of such company, has resigned or ceased to be a member of the company at a time when the liabilities of the company are not satisfied, he shall be deemed a member of the company for the purpose of this Chapter, and shall be liable to contribute as aforesaid to the extent of his liabilities to the company or the contributories independently of this Chapter, and the amount which he is so liable to contribute shall be deemed assets and a debt as aforesaid.

R. S., c. 80, § 22.

**Cessation of membership. 27.** In the case of a company, the liability of whose members is not limited by the Act, charter, or instrument of incorporation of such company, every member of such company at the time of the contracting of any debt or the incurring of any liability shall be liable to contribute to the payment of such debt or liability, notwithstanding he has since ceased to be a member of such company, and notwithstanding any statute relating to the limitation of actions, provided such liability can be enforced at law or in equity against such company.

R. S., c. 80, § 23.

**Liability of heirs, etc. 28.** It shall not be necessary when the personal representative of any deceased contributory is placed on the list to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added at any time afterwards.

R. S., c. 80, § 25.

**Representative contributories. 29.** The list of contributories shall distinguish between persons who are contributories in their own right and as being representatives of or liable for others.

R. S., c. 80, § 24.

**List prima facie evidence of liability. 30.** Any list so settled shall be prima facie evidence of the liability of the persons named therein to be contributories.

R. S., c. 80, § 26.

**Court may settle list. 31.** The list of contributories may be settled by the Court, in which case the liquidator shall make out and leave with the prothonotary of the Supreme Court a list of the contributories of the company, and such list shall be verified by the affidavit of the liquidator, and shall so far as is practicable state the respective addresses of and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories; and such list may from time to time by leave of a Judge be varied or added to by the liquidator.

R. S., c. 80, § 27.

**Settlement of list. 32.** Upon the list being so made up and filed by the liquidator he shall obtain an appointment from the Court, or a Judge, to settle the same, and shall give notice in writing of such appointment to every person included in the list, stating in what character and for what number of shares or interest such person is included in the list, and in case any variation or addition to such list is at any time made by the liquidator a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition.

R. S., c. 80, § 28.

**Settlement of list to be certified. 33.** The result of the settlement of the list of contributories shall be stated in a certificate by the prothonotary of the Court, and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time, or to any particular person, stating any variation of the list.

R. S., c. 80, § 29.

**Contributory's representatives. 34.** If any contributory dies, either before or after he has been placed on the list of contributories, his personal representatives, heirs, and devisees shall be liable in due course of administration to contribute to the assets of the company, association, or club in discharge of the liability of such deceased contributory, and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly.

R. S., c. 80, § 3 (3).

**Calls on contributories. 35.** The liquidators may at any time and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories, for the time being settled on the list of contributories, to pay to the extent of their liability all or any sums the liquidators deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the call is made may partly or wholly fail to pay their respective portions of the same.

R. S., c. 80, § 31.

**Liable to arrest, imprisonment, etc. 36.** Where a person's name is on the list of contributories or is liable to be placed thereon, he shall be subject, in respect to his liability and on the application of the liquidator, to arrest and imprisonment like any other debtor, and he shall for that purpose be deemed a debtor to the company and a debtor to the liquidator, and his arrest may be ordered by the Court, and his being placed on the list of contributories under this Chapter shall be deemed a judgment, and the liquidator shall be deemed a judgment creditor; and the said judgment may be enforced by writ of execution in the same manner as an ordinary judgment in the Supreme Court.

R. S., c. 80, § 32.

**Default of representative of deceased contributory. 37.** If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum to be paid by him, proceedings may be taken for administering the real and personal property of such deceased contributory, and for compelling payment thereof of the money due.

R. S., c. 80, § 30.

#### *Liquidator's duties.*

**Counsel, when allowed liquidator. Liquidator not to purchase stock. Deposit in bank. Deposit, how made. Pass book. When to be produced. Costs, etc., a first charge. Subject to order of Court. 38.** 1. No liquidator shall employ any counsel or solicitor without the consent of the inspector, if any. 2. No liquidator or inspector shall purchase directly or indirectly any part of the stock in trade, debts, or assets of any description of the estate. 3. The liquidator shall deposit at interest in some chartered bank, to be indicated by the inspector or by the Court, all sums of money which he has in his hands belonging to the company, whenever such sums amount to one hundred dollars. 4. Such deposit shall not be made in the name of the liquidator generally, on pain of dismissal, but a separate deposit account shall be kept for the company of the moneys belonging to the company in the name of the liquidator, as such, and of the inspectors (if any), and such moneys shall be withdrawn only on the joint cheque of the liquidator and one of the inspectors, if any. 5. At every meeting of the contributories the liquidator shall produce a bank pass book, shewing the amount of deposits made for the company, the date at which such deposits were made, the amounts withdrawn, and dates of such withdrawals, of which production mention shall be made in the minutes of such meeting, and the absence of such mention shall be prima facie evidence that such pass book was not produced at the meeting. 6. The liquidator shall also produce such pass book whenever so ordered by the Court, at the request of the inspector or of a contributory, and on his refusal to do so he shall be treated as being in contempt of Court. 7. All costs, charges, and expenses properly incurred in the winding-up of a company under this Chapter, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims. 8. Every liquidator or inspector shall be subject to the summary jurisdiction of the Court in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction, and the performance of his duties may be compelled, and all remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, lien, or right of property upon, in, or to any effect or property in the hands, possession, or custody of a liquidator, may be obtained by an order of the Court on summary application, and not by any suit, attachment, seizure, or other proceeding of any kind whatever, and obedience by the liquidator to such order may be enforced by such Court under the penalty of imprisonment as for contempt of Court or disobedience thereto, or he may be removed in the discretion of the Court.

R. S., c. 80, §§ 33-40.



*Meetings.*

**Meeting to fill vacancies. Special resolution. Notices of meetings. Where to be held. Publication of notice. Voting regulated. 39.** 1. If any vacancy occurs in the office of liquidator appointed by the company, by death, resignation, or otherwise, a general meeting of the contributories for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or if none then by any contributory of the company. 2. The liquidators may from time to time during the continuance of the winding-up summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purpose they think fit. 3. The liquidator shall also call meetings of the contributories whenever required in writing so to do by the inspector or five contributories, or by the Court, and he shall state succinctly in the notice calling any meeting the purpose thereof. 4. The contributories may from time to time at any meeting determine where subsequent meetings shall be held, and in the absence of such a resolution all meetings of the contributories shall be held at the office of the liquidator or of the company, unless otherwise ordered by the Court. 5. Notice of any meeting shall, for the purpose of this Chapter, be deemed to be duly given, and the meeting to be duly held, whenever such notice is given and the meeting held in manner prescribed by the Act, charter, or instrument of incorporation, or by the regulations of the company, or by the Court, or notice of the meeting may be given by publication thereof for at least three weeks in the *Royal Gazette*, or by such other or additional notice as the Court, or the inspector, or the company directs, and also, except when the Court otherwise directs, by addressing notices of the meeting to the contributories within the Province, and to the representatives within the Province of contributories who reside out of the Province, and the said notices shall be posted at least ten days before the day on which the meeting is to take place, the postage being prepaid by the liquidator. 6. No contributory shall vote at any meeting unless present personally, or represented by some person having a written authority (to be filed with the liquidator) to act on his behalf at the meeting or generally, and when a poll is taken reference shall be had to the number of votes to which each member is entitled by the Act, charter, or instrument of incorporation, or the regulations of the company.

R. S., c. 80, §§ 42—47.

*Assistance of the Court.*

**Stay of proceedings. 40.** The Court, at any time after an order has been made for winding up a company, may upon the application by motion of any contributory, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time on such terms and subject to such conditions as the Court deems fit.

R. S., c. 80, § 73.

**Application for assistance. 41.** The liquidators, or any contributory of the company, may apply to the Court to determine any question arising in the matter of the winding-up, or to exercise all or any of the powers hereinafter mentioned, and the Court, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede wholly or in part to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order on such application as the Court thinks just.

R. S., c. 80, § 48.

**Proceedings restrained. 42.** The Court at any time after the presentation of a petition for winding up a company, and before making an order for winding up the company, may restrain further proceedings in any action or proceeding against the company (other than under any Insolvent Act in force at the time, or any other authority over which this legislature has no jurisdiction), in and upon such terms as the Court thinks fit.

R. S., c. 80, § 49.

**Advertisement of order. 43.** The Court may make an order that no action or other proceeding shall be proceeded with or commenced against the company, except with the leave of the Court and subject to such terms as the Court imposes; but this section shall not apply to proceedings under any Act of the Parliament of Canada, under its jurisdiction in matters of bankruptcy and insolvency, or otherwise. A copy of any such order shall forthwith be advertised as the Court directs.

R. S., c. 80, § 51.

**Meetings directed.** 44. The Court may direct meetings of the contributories to be summoned, held, and conducted in such manner as the Court thinks fit, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

R. S., c. 80, § 52.

**Transfer of effects.** 45. The Court may require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker, or agent or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the liquidator any sum or balance, books, papers, estate, or effects, which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

R. S., c. 80, § 53.

**Payment of moneys.** 46. The Court may make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the order mentioned, of any moneys due from him or from the estate of the person whom he represents, to the company, exclusive of any moneys which he or the estate of the person whom he represents is liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Chapter.

R. S., c. 80, § 54.

**Payment into bank.** 47. The Court may order any contributory, purchaser, or other person from whom money is due to the company, to pay the same into any bank appointed for this purpose, in any general order made under this Chapter, or in default thereof into any bank named in the order, or into any branch of such bank, to the account of the official liquidator, instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

R. S., c. 80, § 55.

**Order conclusive evidence.** 48. Any order made by the Court in pursuance of this Chapter upon any contributory, shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due, or ordered to be paid, are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever, with the exception of proceedings taken against the real property of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging such real property, unless his heirs or devisees were on the list of contributories at the time the order was made.

R. S., c. 80, § 56.

**Inspection of books.** 49. The Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected in conformity with the order of the Court, but not further or otherwise.

R. S., c. 80, § 57.

**Summons to appear.** 50. The Court may at any time after the commencement of the winding-up of the company, summon to appear before the Court or liquidator any officer of the company, or any other person known or suspected to have in his possession any of the property or effects of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, property, or effects of the company, and in case of refusal by such officer or other person to appear, or answer the questions submitted, he may be committed and punished by the Judge as for a contempt.

R. S., c. 80, § 58.

**Production of books, etc.** 51. The Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company.

R. S., c. 80, § 59.

**Refusal to appear.** 52. If any person so summoned, after being tendered the fees to which a witness is entitled in the Supreme Court, refuses to come before the Court or liquidator at the time appointed, having no lawful impediment, the Court may cause such person to be apprehended and brought before the Court or liquidator for examination.

R. S., c. 80, § 60.



**Examination upon oath. 53.** The Court or liquidator may examine upon oath any person appearing or brought before them in the manner aforesaid, concerning the affairs, dealings, property, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.  
R. S., c. 80, § 61.

**Subpœna. 54.** In any proceedings under this Chapter, the Court may order a writ of subpœna ad testificandum or of subpœna duces tecum to issue, commanding the attendance as a witness of any person within the limits of Nova Scotia.  
R. S., c. 80, § 62.

**Lien on papers. 55.** When any person claims any lien on papers, deeds, or writings, or documents produced by him, such production shall be without prejudice to the lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.  
R. S., c. 80, § 63.

**Malfeasance or breach of trust. 56.** Where, in the course of winding up any company under this Chapter, it appears that any past or present director, manager, liquidator, or any officer of such company, has misapplied or retained in his own hands, or become liable or accountable for, any moneys of the company, or been guilty of any malfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of any contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him or his executors or administrators to repay any moneys so misapplied or retained, or for which he or his estate has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation, in respect to such misapplication, retainer, malfeasance, or breach of trust, as the Court thinks just.  
R. S., c. 80, § 64.

**Appeals provided for. 57.** Any person who is dissatisfied with any order or decision of a Judge in any proceeding under this Chapter, may appeal therefrom in the manner prescribed by the practice and rules of the Supreme Court in relation to appeals from the decision of a single Judge.  
R. S., c. 80, § 68.

**Powers of Court. 58.** Any powers by this Chapter conferred on the Court, shall be deemed to be in addition to and not in restriction of, any other powers subsisting, either at law or in equity, of instituting proceedings against any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor or his estate, and such proceedings may be instituted accordingly.  
R. S., c. 80, § 69.

#### *Proceedings by contributories.*

**Order authorizing proceedings. 59.** If at any time any contributory who desires to cause any proceeding to be taken, which in his opinion would be for the benefit of the company, and the liquidator, under the authority of the contributories or of the inspectors, refuses or neglects to take such proceeding after being duly required so to do, such contributory may obtain an order of the Court authorizing him to take such proceeding in the name of the liquidator or company, but at his own expense and risk, upon such terms and conditions as to indemnity to the liquidator as the Court prescribes; and thereupon any benefit derived from such proceedings shall belong exclusively to the contributory instituting the same for his benefit and that of any other contributory who joins him in causing the institution of such proceeding; but if before such order is granted the liquidator signifies to the Court his readiness to institute such proceeding for the benefit of the company, an order shall be made prescribing the time within which he shall do so, and in that case the advantage derived from such proceeding shall appertain to the company.  
R. S., c. 80, § 65.

**Dissatisfied contributories. 60.** 1. Any one or more contributories, whose claims in the aggregate exceed five hundred dollars, who are dissatisfied with the resolutions adopted or orders made by the contributories or the inspectors, or with any action of the liquidator, for the disposal of the property of the company, or any part thereof, or for postponing the disposal of the same, or with reference to any matter connected with the management or winding-up of the estate, may within

four clear days after the meeting of the contributories, in case the subject of dissatisfaction is a resolution or order of the contributories, or within four clear days after becoming aware of or having notice of the resolution of the inspectors, or action of the liquidator, where such resolution or action in the subject of dissatisfaction, give to the liquidator notice that he or they will apply to the Court on the day and at the hour fixed by such notice, and not being later than four clear days after such notice has been given, or as soon thereafter as the parties may be heard before such Court, to rescind such resolution or orders. 2. The Court, after hearing the inspectors, the liquidators, and contributories present at the time and place so fixed, may approve, rescind, or modify such resolutions or orders. 3. In case of the application being refused, the party applying shall pay all costs occasioned thereby, and in other cases the costs shall be in the discretion of the Court.

R. S., c. 80, § 67.

*Matters of practice.*

**Coss. Mode of application to Court. Dismissal of petition. Pleadings. Books prima facie evidence. Notices. 61.** 1. The costs of proceedings under this Chapter shall be taxed and allowed according to the law relating to costs and fees. 2. Any application to the Court for the winding-up of a company under this Chapter shall be by petition, and the petition may be presented by the company, or by any contributory or contributories of the company. 3. Upon hearing the petition the Court may dismiss the same with or without costs, or may adjourn the hearing conditionally or unconditionally, and may make an interim order or any other order that it deems just. 4. In every petition, application, motion, or other pleading or proceeding under this Chapter the parties may state the facts upon which they rely in plain and concise language, and to the interpretation thereof the rules of construction applicable to such language in the ordinary transactions of life shall apply. 5. All books, accounts, and documents of the company and of the liquidator shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded. 6. Except when otherwise provided for, a clear judicial day's notice of any petition, motion, order, or rule, shall be sufficient, and service of such notice shall be made in such manner as a similar service in a civil action.

R. S., c. 80, §§ 70, 71, 72, 75, 76, 77.

**Rules of procedure. 62.** The rules of procedure for the time being as to amendments of pleadings and proceedings in the Supreme Court, shall as far as practicable apply to all pleadings and proceedings under this Chapter, and the Court or liquidator before whom such proceedings are pending, shall have full power and authority to apply the appropriate rules as to amendments to such proceedings, and no pleading or proceeding shall be void by reason of any irregularity or default which can or may be amended or disregarded under the rules and practice of the Court.

R. S., c. 80, § 74.

**Enforcement of orders. 63.** All orders made by the Court may be enforced in the same manner and by the same officers as in the case of orders of such Court made in any action pending therein.

**Judges to make rules, etc. 64.** A majority of the Judges of the Supreme Court from time to time shall make, frame, settle, and approve of the forms, rules, and regulations to be followed and observed in proceedings under this Chapter, and shall have power to amend, change, and vary the same, and such forms, rules, and regulations, being first published in the *Royal Gazette*, shall have the same force and effect as if they had been made and included in this Chapter.

R. S., c. 80, § 83.

*Dissolution of the company.*

**Dissolution of company. Order for dissolution. 65.** 1. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account, shewing the manner in which such winding-up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the members of the company, for the purpose of having the account laid before them, and hearing any explanation that is given by the liquidators; such meeting shall be called by advertisement, specifying the time, place, and object thereof; and the advertisement shall be published one month at least previous thereto. The liquidator shall make a return to the Provincial Secretary of such meeting having been held,



and of the date at which the same was held, which return shall be filed in the office of the Provincial Secretary, and on the expiration of three months from the date of filing such return the company shall be deemed to be dissolved. 2. Or, whenever the affairs of the company have been completely wound up, the Court may make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly; which order shall be reported by the liquidator to the Provincial Secretary.

R. S., c. 80, §§ 78, 79.

**Liquidator's default.** 66. If the liquidator makes default in transmitting to the Provincial Secretary the return mentioned in the next preceding section, or in reporting the order (if any) declaring the company dissolved, he shall be liable to a penalty not exceeding twenty dollars for every day during which he is in such default.

R. S., c. 80, § 80.

**Dividends to be deposited.** 67. All dividends deposited in a bank and remaining unclaimed at the time of the dissolution of the company shall be left for three years in the bank where they are deposited, and if still unclaimed shall then be paid over by such bank with interest accrued thereon to the Provincial Treasury, and if afterwards duly claimed shall be paid over to the persons entitled thereto.

R. S., c. 80, § 81.

**Deposit of funds, etc. Penalty. Disposal of unclaimed moneys.** 68. 1. Every liquidator shall within thirty days after the date of the dissolution of the company deposit in the bank appointed or named, as hereinbefore provided, for any other money belonging to the estate then in his hands not required for any other purpose authorized by this Chapter, with a sworn statement and account of such money, and that the same is all he has in his hands. 2. Every liquidator neglecting to make such deposit shall be liable to a penalty not exceeding ten dollars for each day during which such neglect continues, and he shall be a debtor to Her Majesty for such money, and may be compelled as such to account for and pay over the same. 3. The money so deposited shall be left for three years in the bank, and shall be then paid over with interest to the Provincial treasury, and if afterwards claimed shall be paid over to the person entitled thereto.

R. S., c. 80, § 82.

**Disposal of books, etc.** 69. When any company has been wound up under this Chapter and is about to be dissolved, the books, accounts, and documents of the company and of the liquidators may be disposed of in such a way as the company by an extraordinary resolution directs. After the lapse of five years from the date of such dissolution no responsibility shall rest on the company or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

R. S., c. 80, § 82.

## d) Rev. St. 1900, c. 130. Of certain Provisions respecting the Contracts of Corporations.

**"Corporation."** 1. In this Chapter the expression "corporation" includes the city of Halifax, any incorporated town, and any municipal or public corporation, as well as any private company.

Acts, 1891, c. 19, § 4.

**Certain contracts heretofore made declared valid. Proviso as to certain other contracts. Effect of affixing of seal.** 2. 1. Every contract made or entered into by any corporation within the scope of its charter or Act of incorporation, under such conditions and circumstances and in such manner that the same would be valid and binding if the corporate seal were affixed thereto, shall be so valid and binding notwithstanding the failure or omission to affix a seal. 2. This section shall not make valid any contract of a corporation which, if made by any person other than a corporation, would be invalid for want of a seal. 3. The affixing of a seal to the contract of a corporation shall have the same effect as the affixing of a seal to the contract of an individual.

Acts, 1891, c. 19, §§ 1, 2, 3.

**Certain appointments and retainers legalized.** 3. No appointment or retainer of an attorney or solicitor by any corporation shall be invalid or defective by reason that the same was not made under seal.

**e) Acts, 1901, c. 11. An Act respecting the Changing the Name of Companies incorporated under Special Charter (4th April, 1901).**

**Power of Governor-in-Council to change name of companies incorporated under special Act.** 1. The Governor-in-Council may, by Order-in-Council, upon the application of any company incorporated under and by a special Act of the Legislature of the Province of Nova Scotia, change the name of such company, and such change shall not affect the rights, powers, franchises, or existence of such company, but shall have the same effect as though accomplished by special Act of the said Legislature.

**Payment of fee.** 2. Before said Order-in-Council is made the company applying for the same shall pay into the Provincial Treasury a sum equal to the fee it would be required to pay in order to secure an Act of the said Legislature making such change.

**Company prohibited to take name of other company.** 3. Nothing in this Act shall be taken to authorize the name of any such company being changed so as to be the same as that of any other company incorporated under and by any other special Act of said Legislature, or under the provisions of Chapter 128 of the Revised Statutes, 1900.

**Notice of change of name, how given.** 4. Notice of said change of name shall be given by such company in the *Royal Gazette*, and in one or more newspapers in the Province of Nova Scotia, published in a county where said company is authorized to carry on business.

**Change of name not to affect rights, liabilities, etc.** 5. The change of name shall not in any way affect the rights, duties, liabilities, and obligations of the company, nor affect any actions brought by or against the company under the original name; and such actions shall go forward as if such name had not been changed, and judgment and execution may be entered by and against the said company under the changed name.

**f) Acts, 1902, c. 8. An Act to amend the Nova Scotia Companies' Act, 1900 (27th March, 1902).**

**Principal Act.** 1. The Nova Scotia Companies' Act is hereinafter referred to as "The Principal Act," and the principal Act and this Act are hereinafter distinguished as and may be cited for all purposes as *Nova Scotia Companies' Act*, and this Act shall so far as is consistent with the tenor thereof, be construed as one with the principal Act; and the expression "this Act" in the principal Act and any expression referring to the principal Act which occurs in any Act or other document shall be construed to mean the principal Act as amended by this Act.

**Provision for application to Court for relief where section 64 of principal Act has not been complied with. Application how to be made. Terms and conditions of order. In certain cases memorandum in writing to be filed.** 2. [As amended by Acts, 1905, c. 10, § 1.] 1. Whenever before or after the commencement of this Act any shares in the capital of any company under the principal Act, credited as fully or partly paid up, shall have been or may be issued for a consideration other than cash, and at or before the issue of such shares no contract or no sufficient contract is filed with the Registrar in compliance with section 64 of the principal Act, the company or any person interested in such shares or any of them, may apply to the Court for relief, and the Court, if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief, may make an order for the filing with the Registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period it shall in relation to such shares operate as



if it had been duly filed with the Registrar aforesaid at or before the issue of such shares. 2. Any such application may be made in the manner in which an application to rectify the register of members may be made under section 60 of the principal Act, and either before or after an order has been made or effective resolution has been passed for the winding-up of such company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid, and any such application shall, if not made by the company, be served on the company. 3. Any such order may be made on such terms and conditions as the Court may think fit, and the Court may make such order as to costs as it deems proper, and may direct that an office copy of the order shall be filed with the Registrar aforesaid, and the order shall in all respects have full effect. 4. Where the Court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience or is impracticable, it may in lieu thereof direct the filing of a memorandum in writing in a form approved by the Court, specifying the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period it shall in relation to such shares operate as if it were duly made in writing within the meaning of section 64 of the principal Act, and have been duly filed with the Registrar aforesaid before the issue of such shares.

*Share warrants to bearer.*

**Share warrant to bearer.** 3. In the case of a company limited by shares, the company, if authorized so to do by its regulations as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant, stating that the bearer of the warrant is entitled to the share or shares of stock therein specified, and may provide by coupons or otherwise for the payment of the future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a share warrant.

**Effect of share warrant.** 4. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

**Bearer of share warrant entitled to have name entered as member in register.** 5. The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled.

**Bearer of share warrant may be deemed member of company. Proviso.** 6. The bearer of a share warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of the principal Act either to the full extent or for such purposes as may be prescribed by the regulations. Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company in cases where such qualification is prescribed by the regulations of the company.

**Further proceedings on issue of share warrant.** 7. On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars: a) The fact of the issue of the warrant; b) A statement of the shares or stock included in the warrant, distinguishing each share by its number; c) The date of the issue of the warrant; and until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the fifty-fifth section of the principal Act to be entered in the register of members of a company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

**After issue of share warrant annual summary required by section 55 of principal Act shall contain following particulars.** 8. After the issue by the company of a share warrant the annual summary required by the fifty-sixth section of the principal Act shall contain the following particulars: the total amount of shares or stock for

which share warrants are outstanding at the date of the summary, and the total amount of share warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

After passing of this Act no letters patent to issue under joint stock companies Act. Cap. 79 Revised Statutes, 5th series. 9. From and after the passing of this Act no letters patent granting a charter for the creation of a body corporate, shall be issued by the Governor-in-Council under the Nova Scotia Joint Stock Companies' Act, Chapter 79 of the Revised Statutes, 5th series, or any amendment thereto.

**g) Acts, 1903, c. 17. An Act to amend Chapter 127, Revised Statutes, 1900, Of General Provisions respecting Domestic and Foreign Companies (11th April, 1903).**

[1. Amends R. S., 1900, c. 127, § 19, and adds §§ 20, 21, which changes are there incorporated.]

**h) Acts, 1903, c. 18. An Act to amend Chapter 128, Revised Statutes, 1900, Of Joint Stock Companies (11th April, 1903.)**

- [1. Adds § 119 to R. S., 1900, c. 128, and is there reprinted.]
- [2. Amends R. S., 1900, c. 128, § 13, and is there incorporated.]
- [3. Amends R. S., 1900, c. 128, § 89 (2), and is there incorporated.]

**i) Acts, 1903, c. 19. An Act to amend Chapter 128, Revised Statutes, 1900, Nova Scotia Companies' Act (11th April, 1903).**

- [1. Amends R. S., 1900, c. 128, § 93, and is there incorporated.]

Special resolution, confirmation unnecessary. 2. Whenever a resolution has been unanimously passed at any general meeting or at any extraordinary general meeting all the shareholders of the company being present in person or by proxy, the same shall be deemed a special resolution and no confirmation of such resolution at any subsequent meeting shall be necessary.

**j) Acts, 1904, c. 23. An Act to amend Chapter 128 Revised Statutes, 1900, The Nova Scotia Companies Act (3d March, 1904).**

- [1. Repeals certain portions of R. S., 1900, c. 128, Sched. I, Table B.]
- [2. Repeals R. S. 1900, c. 128, §§ 56, 57.]
- [3. Amends R. S. 1900, c. 128, § 58, and is there incorporated.]
- [4. Amends R. S. 1900, c. 128, § 15, and is there incorporated.]
- [5. Amends R. S. 1900, c. 128, Sched. I, Table A, and is there incorporated.]

**k) Acts, 1904, c. 24. An Act to amend Chapter 127, Revised Statutes, 1900, Of General Provisions respecting Domestic and Foreign Companies (3d March, 1904).**

- [1. Repeals R. S. 1900, c. 127, § 22, as added by Acts, 1903, c. 17.]
- [2. Repeals Acts, 1903, c. 16.]
- [3. Amends R. S. 1900, c. 127, § 14, and is there incorporated.]
- [4. Repeals R. S. 1900, c. 127, § 15.]
- [5. Amends R. S. 1900, c. 127, § 18, and is there incorporated.]
- [6. Adds §§ 22—24 to R. S. 1900, c. 127, which are there reprinted.]



**l) Acts, 1905, c. 10. An Act to amend Chapter 8, Acts of 1902, entitled An Act to amend the Nova Scotia Companies Act, 1900 (7th April, 1905).**

[1. Amends Acts, 1903, c. 8, § 2 (1), and is there incorporated.]

[2. Makes amendment provided for in § 1 retroactive, so as to date as from the date of the Act of 1903.]

**m) Acts, 1908, c. 30. An Act to amend Chapter 127, Revised Statutes, 1900, entitled Of General Provisions respecting Domestic and Foreign Companies (16th April, 1908).**

[1. Adds § 25 to R. S. 1900, c. 127, and is there reprinted.]

**n) Acts, 1909, c. 38. An Act to amend Chapter 128, Revised Statutes, 1900, the Nova Scotia Companies Act (23d April, 1909).**

[1. Amends R. S. 1900 c. 128, § 21, and is there incorporated.]

**o) Acts, 1909, c. 39. An Act to amend Chapter 128, Revised Statutes of Nova Scotia, 1900, the Nova Scotia Companies Act (23d April, 1909).**

[1. Amends R. S. 1900, c. 128, § 15, and is there incorporated.]

**p) Acts, 1910, c. 16. An Act to amend the Law in Relation to Joint Stock Companies (22d April, 1910).**

**Bonds kept alive for issue or re-issue. Re-issue by nominee of company. Bonds deposited for advances. Re-issue not a new bond. Issue of new bonds to replace paid off bonds, not prejudiced. Application of Act.** 1. 1. Where either before or after the passing of this Act a company has redeemed any bonds or debentures previously issued, the company, unless the special Act incorporating the company or the by-laws or the articles of association of the company or the conditions of issue expressly otherwise provide (or unless the bonds or debentures have been redeemed in pursuance of any obligation of the company so to do, and not being an obligation enforceable only by the person to whom the redeemed bonds or debentures were issued, or his assigns), shall have power, and shall be deemed always to have had power, to keep the bonds or debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power, the company shall have power, and shall be deemed always to have had power, to re-issue the bonds or debentures, either by re-issuing the same bonds or debentures, or by issuing other bonds or debentures in their place, and upon such a re-issue the person entitled to the bonds or debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the bonds or debentures had not previously been issued. 2. Where, with the object of keeping bonds or debentures alive for the purpose of re-issue, they have either before or after the passing of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section. 3. Where a company has, either before or after the passing of this Act, deposited any of its bonds or debentures to secure advances on current account or otherwise, the bonds or debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the bonds or debentures remained so deposited nor by reason of the repayment of the advances. 4. The re-issue of a bond or debenture, or the issue of another bond or debenture in its place, under this section, whether made

before or after the passing of this Act, shall not be treated as the issue of a new bond or debenture for any purpose. 5. Nothing in this section shall prejudice any power to issue bonds or debentures in the place of any bond or debenture paid off, or otherwise satisfied or extinguished, reserved to a company by its bonds or debentures, or the securities for the same. 6. This section shall apply to any company heretofore incorporated under the laws of Nova Scotia, whether by the *Nova Scotia Joint Stock Companies' Act*, being Chapter 79 of the Revised Statutes, fifth Series, or by the *Nova Scotia Companies' Act*, being Chapter 128 of the Revised Statutes, 1900, or by a special Act of the Legislature.

### Sale of Goods.

#### Acts, 1910, c. 1. An Act for codifying the Law relating to the Sale of Goods (30th March, 1910).

[This Act is identical in all material respects with the Imperial *Sale of Goods Act, 1893* (56 & 57 Vic. c. 71), except as follows: The Nova Scotia Act applies to contracts for \$40 or upwards. There is no provision regarding market overt. § 26 of the Imperial Act relating to writs of execution is omitted. § 32 (3) is extended so as to require notice where goods are sent by a route involving lake or river transit.]

Where an infant trader purchased goods which he subsequently transferred to his boarding-house keeper on account of his board it was held that the fact of the goods being so applied did not render them necessaries, so as to enable the seller to recover. — *Jenkins v. Way*, (1881), 14 N. S. 394. For a case where under the facts it was held that no sufficient evidence was shown entitling the unpaid seller to have a contract of sale rescinded on the ground of fraud, see *Small v. Glasel*, (1896), 28 N. S. 245. Where the goods are in esse and in a position to be inspected by the buyer, and there is no fraud on the part of the seller, the maxim *caveat emptor* applies. — *Higgins v. Clish*, (1901), 34 N. S. 135. Where the buyer inspects the goods and relies upon his own judgment there is no implied warranty of quality. — *Laurie v. Croucher*, (1891), 23 N. S. 293. Where the buyer has ample opportunities to inspect the goods purchased, and the seller sells, and the buyer buys, a specific, visible thing, there is no implied warranty of merchantable quality. — *Fraser v. Salter*, (1869), 7 N. S. 424. — Where a contract for the sale of lime juice provided for an inspection and regauging of the same and a part of the lime juice was inspected by the agent of the buyer, who placed the buyer's initials on several casks for the purpose of identifying them it was held that the buyer was entitled, in addition, to a regauging under the terms of the contract, and that the mere marking of the casks with defendant's initials did not under the circumstances constitute an acceptance within the Statute of Frauds. — *Hart v. Anderson*, (1892), 24 N. S. 157. The general rule is that whatever is represented by the seller at the time of the sale is a warranty, but a sharp distinction must be drawn between language merely of explanation, estimate, or praise, and that which constitutes a representation or warranty. — *Irvine v. Parker*, (1904), 40 N. S. 392. Representations made by the seller as to the amount he paid for the article are "dealer's talk," and the rule of *caveat emptor* applies. — *Young v. McMillan*, (1894), 40 N. S. 52. Where a horse was sold, warranted sound and without vice, fault, or tricks, and the evidence showed that for a period of eight years prior to the sale the horse was without fault or tricks, but that immediately afterwards, in the hands of the buyer, it balked and kicked when in harness, and was useless for the purposes for which it was purchased, it was held that the buyer was not entitled to recover. — *McGill v. Harris*, (1903), 36 N. S. 414. The purchaser of goods subject to latent defect, sold with a warranty, is estopped from claiming for a breach of the warranty by reason merely of the fact of having received the goods without objection made at the time. — *Smith v. Archibald*, (1907), 41 N. S. 211. An undertaking in the sale of a bicycle that the same would carry the purchaser, or bear his weight, implied the condition of reasonably good usage. — *Johnston v. Moore*, (1901), 34 N. S. 85. — Where the seller disposes of the goods as owner there is an implied warranty of title. — *McFatrige v. Robb*, (1892), 24 N. S. 506. Where the buyer rejects the object sold on the ground that it does not conform to description he must not make use of the object. Using the object will be regarded as an acceptance thereof. — *Thompson v. Cameron*, (1906), 41 N. S. 29. Where a sale is sought to be rescinded on the ground that certain stipulations as to quality amounted to a condition the buyer must reject the goods immediately upon learning that they are not in accordance with the contract. — *Burke v. Roberts*, (1895), 27 N. S. 445. — Where goods when shipped are in merchantable condition and there is a depreciation through exceptional and accidental causes the loss falls upon the buyer. — *Barnes v. Waugh*, (1906), 41 N. S. 38. Where a contract for the sale of a mowing machine called for delivery in a satisfactory working condition and the machine was brought to the buyer's field, where in the course of a trial which he proceeded to



make a wheel became broken, it was held that the seller was not entitled to recover the price, the machine never having been delivered in a satisfactory working condition. — *Lawlor v. Mumford*, (1882), 16 N. S. 35. In a sale of canned lobsters where the contract provided that the lobsters should be free from stains or black smut and that the contents of the cans should keep in Europe for at least nine months from the date of delivery, it was held that these stipulations amounted to warranties, the proper remedy for the breach of which was an action for damages. — *Wurzburg v. Andrews*, (1896), 28 N. S. 387. The sale of No. 1 salmon, without express warranty, amounts to a warranty that the fish are in the condition prescribed by law for fish of that brand, and such warranty is violated if the article, owing to a secret defect existing at the time of sale, afterwards becomes deteriorated in value. — *Hardy v. Fairbanks*, (1847), 2 N. S. 432. Wool was sent to the buyer to be credited at 27  $\epsilon$  per lb., in accordance with a previous offer. The buyer declined to pay the price named and offered 21  $\epsilon$  on the ground that the wool was inferior in quality to that agreed on. The seller declined the offer of 21  $\epsilon$  and agreed to take back the wool, but before it was delivered the buyer used a portion of it, whereupon the seller refused to take back the balance and claimed payment for the wool at 27  $\epsilon$ . It was held (per *Ritchie and Townshend, J.J.*) that the buyer was bound to keep the wool at the price at which the seller offered to sell; (per *McDonald, C. J.*); that the buyer was only liable for the actual value; (per *Weatherbe, J.*), that the sum of 27  $\epsilon$  per lb., never having been agreed upon as the price, the buyer was only bound to pay the actual value. — *Eureka Woolen Mills v. Kirk*, (1889), 21 N. S. 335. Where goods are sold on credit interest is recoverable on the purchase price from the date at which the credit expires where such is the usage of trade at the place where the goods are sold, although there have been no previous dealings between the parties, no engagement to pay interest and no notes under the statute that interest would be claimed. — *Bannerman v. Fullerton*, (1862), 5 N. S. 200. Where the facts show an absolute sale and delivery to the buyer, the property vests in the buyer even though the goods were obtained by false representations, until the seller has done some act to disaffirm the transaction. — *Outram v. Smith*, (1876), 11 N. S. 187. A provision in a bill of lading making the goods deliverable to the order of the consignors is merely *prima facie* evidence of an intention to preserve the right of transferring the goods and is not conclusive. Other facts may show that the sale is complete and that title in the property has passed to the buyer. — *Rugh v. Wyld*, (1876), 11 N. S. 177. As to the effect of a partial destruction of the subject matter of the sale before the transaction is completed, see *Whitman v. Parker*, (1885), 6 R. & G. 155. Where a seller, having on his premises goods of the invoice value of \$ 17,000, executes a conveyance of goods for the invoice value of \$ 6,500, but such conveyance is in general terms and does not specify any particular portion of the stock, and is not followed by any selection or preparation from the stock, or any delivery of any part of it, no property passes by such conveyance. — *Ross v. Cameron*, (1889), 40 N. S. 126. C. P. obtained a piano from P. & S. on hire, with the privilege of purchasing it for \$ 350 by paying certain instalments within a certain time. The agreement provided that the piano should remain the property of P. & S. until fully paid for, and that in default of any instalment they might resume possession without previous demand and that C. P. should pay interest upon the purchase money at 7 per cent. C. P. paid two instalments amounting to \$ 150 and became insolvent. At a trial of the right of property to the piano between P. & S. and H. L., a creditor of C. P., claiming under an assignment made to him by C. P. as security for a debt and received without knowledge of the agreement with P. & S., which assignment was duly filed and registered, it was held that the usury statute did not apply, that the transaction was a conditional sale, that the claim of P. & S. was not prejudiced by their not having taken back the piano as soon as the time was up, that the agreement between P. & S. and C. P. was not in the nature of a bill of sale and did not require registration, and that P. & S. were entitled to have the piano on paying to H. L. the amount they had received on its account from C. P. — *In re Pyke*, (1873), 9 N. S. 342. H., engaged in business at Halifax, consigned to J. L. in accordance with the usual course of business between the parties, a lot of hides and sent a note for the price according to his own estimate of weight, etc., subject to rebate if there was any deficiency. The note was signed by J. L. and discounted by H. The goods arrived at their destination and remained there about three weeks, when J. L. sent his lighterman for some other goods, and he, finding the goods shipped by H., brought them up in the lighter. The next day J. L. was informed of their arrival and stored them in the warehouse of D. L., where he had other goods, with instructions to keep them for the parties who had sent them. The same day he sent a telegram to H. as follows: "In trouble, have delivered hides. Appoint someone to take care of them." H. learned what had been done with the hides and expressed himself as satisfied. He asked if he could take them away, but was assured by J. L. that they were all right and left them in the warehouse. Subsequently a levy under execution of the bank that had discounted the note was made against J. L. on all his property, but the goods in question were not included in the levy. Six days later J. L. gave the bank a bill of sale of all his hides in the warehouse of D. L. and the bank indemnified D. L. and took possession under the bill of sale of the hides shipped by H. In a suit by H. against the bank and the warehouseman it was held that the contract of sale between J. L. and H. was rescinded by the action of J. L. in refusing to take possession of the goods when they arrived and handing them over to D. L. with instructions to hold for the consignor and in notifying the consignor, who acquiesced and adopted the act of J. L., whereby the property in and possession of the goods became re-vested in H. There was consequently no title to the goods in J. L. when the bill of sale was made to the bank. — *Pictou Bank v. Harvey*, (1887), 14 S. C. R. 617;

affirming *Harvey v. Pictou Bank*, (1886), 19 N. S. 196. An agreement contained the following terms: "Received from Messrs. W. F. & Son the following articles of furniture, for which I am to pay \$ 225.25, or more, in monthly payments of \$ 20 each month from date. The said furniture to remain the property of W. F. & Son till paid for in full, and in the event of non-payment monthly the said W. F. & Son can take the furniture back." It was held that where possession was delivered on the conditions above set forth the property did not pass until the condition was fulfilled and part payments made could be forfeited. — *Fraser v. Wallace*, (1876), 11 N. S. 337; affirmed, *Wallace v. Fraser*, (1878), 2 S. C. R. 522. Where goods were shipped on board a vessel by the seller under condition that the consignee should pay the freight and the consignee paid for the good before action brought, it was held that the consignee was the proper party plaintiff in an action for damages occasioned by non-delivery of the goods. — *Adams v. Crosby*, (1881), 2 R. & G. 331. Where a contract provided that the property in the object should remain in the seller until payment in full of the price, which was payable in instalments, but that the buyer, making the payments agreed upon when due, should be entitled to the possession and use of the property, and providing further, that if at any time before payment in full of the price the buyer should fail in the performance of the agreement on his part, the seller should be entitled to immediate possession, it was held (per *Weatherbe and Graham, J.J.*) that the seller was entitled to elect to sue on the ordinary breach of the contract to pay; (per *Ritchie and Meagher, J.J.*) that in the event of non-performance by the buyer of the conditions of sale the seller was entitled to retake possession, but was not entitled to sue under the agreement for non-payment of the instalments. — *Travis v. Way*, (1901), 33 N. S. 551. In a conditional sale where the seller avails himself of the condition of retaking the property the sale is rescinded and all rights and liabilities under the contract cease. — *White v. Smith*, (1885), 28 N. S. 5. See further as to instalment contracts and conditional sales; *Miller Bros. v. Blair*, (1904), 37 N. S. 293; *Miller v. Curry*, (1893), 25 N. S. 537; *Guest v. Diack*, (1897), 29 N. S. 504; *Kent v. Ellis*, (1900), 32 N. S. 549; *Lapierre v. McDonald*, (1906), 39 N. S. 24.

## Factors.

### a) Rev. St. 1900, c. 146. Of Factors and Agents.

#### *Short title.*

**Short title.** 1. This Chapter may be cited as *The Factors Act*.  
Acts, 1895, c. 11, § 16.

#### *Interpretation.*

**Interpretation.** 2. In this Chapter unless the context otherwise requires:  
a) The expression "mercantile agent" means a mercantile agent having in the customary course of his business as such agent, authority either to sell goods or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods; b) A person shall be deemed to be in possession of goods, or of the documents of title to goods, where the goods or documents are in his actual custody, or are held by any other person subject to his control, or for him or on his behalf; c) The expression "goods" includes wares and merchandise; d) The expression "document of title" includes any bill of lading, dock warrant, warehouse keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented; e) The expression "pledge" includes any contract pledging, or giving a lien or security, on goods, whether in consideration of an original advance or of any further or continuing advance, or of any pecuniary liability; f) The expression "person" includes any body of persons, corporate or unincorporate.

Acts, 1895, c. 11, § 1.

#### *Dispositions by mercantile agents.*

Mercantile agent in possession of goods by consent of owner, any sale, etc., made by him valid as if authorized, provided person acquires in good faith. Consent of owner valid which has been discontinued if person acquiring had not notice of discontinuance. Agent obtaining possession of documents of title by reason of being in possession of the goods deemed to have possession of documents by consent of owner. Consent presumed. 3. 1. Where a mercantile agent is, with the consent of the owner, in possession of goods, or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this



Chapter, be as valid as if he was expressly authorized by the owner of the goods to make the same, provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same. 2. Where a mercantile agent has, with the consent of the owner, been in possession of goods, or of the documents of title to goods, any sale, pledge, or other disposition which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent; provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined. 3. Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first mentioned documents shall, for the purposes of this Chapter, be deemed to be with the consent of the owner. 4. For the purposes of this Chapter the consent of the owner shall be presumed in the absence of evidence to the contrary.

Acts, 1895, c. 11, § 2.

**Effect of pledges of documents.** 4. A pledge of the documents of title to goods shall be deemed to be a pledge of the goods.

Acts, 1895, c. 11, § 4.

**Rights of pledgee, where agent pledges goods.** 5. Where a mercantile agent pledges goods as security for a debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

Acts, 1895, c. 11, § 4.

**What consideration in case of sale, pledges, etc., made by an agent is necessary to validity of transaction.** 6. The consideration necessary for the validity of a sale, pledge, or other disposition of goods, in pursuance of this Chapter, may be either a payment in cash, or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, documents, or security when so delivered or transferred in exchange.

Acts, 1895, c. 11, § 5.

**Effect of agreement made through clerk of agent.** 7. For the purposes of this Chapter an agreement made with a mercantile agent through a clerk or other person authorized in the ordinary course of business to make contracts of sale or pledge on his behalf, shall be deemed to be an agreement with the agent.

Acts, 1895, c. 11, § 6.

**Owner giving possession of goods for consignment or sale or shipping in name of another consignee without notice to have same lien as if such person was owner.**

**Proviso.** 8. 1. Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect to advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person. 2. Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition, by a mercantile agent.

Acts, 1895, c. 11, § 7.

*Dispositions by sellers and buyers of goods.*

[9—10. Are repealed.]

**Document of title transferred to a person as buyer, etc., and by him transferred to person receiving in good faith and for value, last transfer will defeat vendor's lien, etc.** 11. Where a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith, and for valuable consideration, the last mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage in transitu as the transfer of a bill of lading has for defeating the right of stoppage in transitu.

Acts, 1895, c. 11, § 10.

*Miscellaneous.*

**Transfer of document by indorsement or delivery, etc.** 12. For the purposes of this Chapter the transfer of a document may be by indorsement, or where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery.

Acts, 1895, c. 11, § 11.

**Agent not authorized by Chapter to exceed his authority, etc. Nothing herein to prevent owner from recovering goods from agent in certain cases. Nothing to prevent owner recovering price from buyer of goods sold by agent subject to set-off, etc.** 13. 1. Nothing in this Chapter shall authorize an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability for so doing. 2. Nothing in this Chapter shall prevent the owner of goods from recovering the goods from an agent at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof, on satisfying the claim for which the goods were pledged and paying to the agent, if by him required, any money in respect to which the agent would, by law, be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands, as the produce of the sale of the goods, after deducting the amount of his lien. 3. Nothing in this Chapter shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set-off on the part of the buyer against the agent.

Acts, 1895, c. 11, § 12.

**Provisions of Chapter, how to be construed.** 14. The provisions of this Chapter shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Chapter.

Acts, 1895, c. 11, § 13.

**Bills of Lading.****Rev. St. 1900, c. 148. Of Bills of Lading.**

**Consignees of goods and indorseees of bills of lading to acquire rights.** 1. Every consignee of goods named in a bill of lading and every indorsee of a bill of lading to whom the property in the goods therein mentioned passes upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of action and be subject to the same liabilities in respect to such goods as if the contract contained in the bill of lading had been made to himself.

Acts, 1888, c. 30, § 1.

**Not to prejudice right of stoppage in transitu.** 2. Nothing in this Chapter contained shall prejudice or affect any right of stoppage in transitu, or any right to claim freight against the original shipper or owner, or any liability of the consignee or indorsee by reason of his being such consignee or indorsee, or of his receipt of the goods by reason or in consequence of such consignment or indorsement.

Acts, 1888, c. 30, § 2.

**Bill of lading, when to be evidence of shipment against person signing same.** 3. Every bill of lading in the hands of a consignee or indorsee for valuable consideration, representing goods to have been shipped on board a vessel or train, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof have not been so shipped, unless such holder of the bill of lading has actual notice at the time of receiving the same that the goods had not in fact been laden on board, or unless such bill of lading has a stipulation to the contrary; but the master or other person so signing may exonerate himself in respect to such misrepresentation by shewing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or of some person under whom the holder claims.

Acts, 1888, c. 30, § 2. In the absence of legislative enactments a railway or steamship company may exempt itself from liability for injury, however caused, including injuries caused by the gross negligence, fraud, or dishonesty of its employees. *Dodson v. Grand Trunk Railway Co.* (1871), 8 N. S. 405. A bill of lading contained the following provision: "Loss or damage from . . . . ."



leakage, breakage, rust, decay, frost, rain, injury to or soiling of wrappers or packages, however caused, . . . excepted; the goods are to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed by the master and deposited at the expense of the consignee and at his risk of fire, loss, or injury in the warehouse provided for that purpose on the company's wharf at Halifax, or sent to the public store, as the collector at the port of Halifax shall direct." The vessel proceeded on her arrival in port to the railway wharf, and in order to discharge other goods the consignee's goods were taken out and deposited in a shed on the wharf. The consignee was aware of the arrival of the ship and paid the freight, but was unable to obtain delivery at the railway wharf, as the approach was unfit for teams. The agent of the ship afterwards sent the goods in a lighter to Corbett's wharf. The goods were injured by rain either on the railway wharf or in the shed. Held, that the landing of the goods at the railway wharf did not discharge the carrier, who was liable, notwithstanding the exceptions in the bill of lading, for the injury to the goods by rain. — *Robertson v. Dominion Steamship Co.* (1879) 13 N. S. 149. Where a bill of lading provided that "claims, if any, for loss by damage, short delivery, or any other cause, shall at the option of the ship's owners be settled direct with the agents of the line in Liverpool, according to British law with reference to which this contract is made, to the exclusion of proceedings in any other country," and the defendant carriers were not residents of Nova Scotia, it was held that as there was an uncertainty as to the sufficiency of the words of the contract to exclude the jurisdiction of the Nova Scotia Court, the proper course was to allow service abroad, leaving the meaning of the provision to be discovered subsequently. — *Stairs v. Allan*, (1896), 28 N. S. 410. Where a bill of lading provided for the carriage of goods from Nova Scotia to Liverpool and their delivery there to a steamer of the Cunard line, to be carried to a port in Italy, and contained a condition that "any claim or dispute arising on this bill of lading shall be determined according to English law in England," it was held that an action brought against the carrier for failure to deliver the goods to a steamer of the Cunard line, as agreed, could not be brought in a Nova Scotia court. — *Hart & Son v. Furness, Withy & Co.*, (1904), 37 N. S. 74. As to what constitutes a reasonable time for the carriage of certain perishable goods, see *Bauld v. Smith*, (1901), 40 N. S. 294. Where goods are shipped by rail addressed to the care of the carrier's agent at a particular station the carrier upon the arrival of the goods becomes a bailee and liable for the reasonable care and custody thereof. — *Bell v. Windsor & Annapolis Railway Co.*, (1892), 24 N. S. 521.

## Assignments and Creditors' Relief.

### a) Rev. St. 1900, c. 145. Of Assignments and Preferences by Insolvent Persons.

#### *Short title.*

**Short title.** 1. This Chapter may be cited as *The Assignments Act*.

#### *Interpretation.*

**Interpretation.** 2. In this Chapter, unless the context otherwise requires:

a) The expression "insolvent person" means any person who is in insolvent circumstances, or is unable to pay his debts in full, or knows himself to be about to become insolvent; b) The expression "transfer" includes gift, conveyance, assignment, delivery over, or payment of property; c) The expression "property" means goods, chattels or effects, bills, notes, or securities, shares, dividends, premiums, or bonus in any bank, company, or corporation, and every other description of property, real and personal; d) The expression "Judge" means a Judge of the Supreme Court, or the Judge of the County Court for the county in which an assignment under this Chapter is registered.

#### *Confession of judgment, assignment, etc., in fraud of creditors.*

**Confession of judgment in fraud of creditors made void.** 3. If any insolvent person, voluntarily or by collusion with a creditor or creditors, gives a confession of judgment, *cognovit actionem*, or warrant of attorney to confess judgment, with intent in giving the same: a) To defeat or delay his creditors wholly or in part; or b) Thereby to give one or more of his creditors a preference over his other creditors, or over any one or more of such creditors, every such confession, *cognovit actionem*, or warrant of attorney to confess judgment shall be deemed and taken to be null and void as against the creditors of the person giving the same, and shall be invalid and ineffectual to support any judgment or writ of execution.

Acts, 1898, c. 11, § 1.

**Preferences made void. When transfer deemed to give an unjust preference. "Creditor" includes surety.** 4. 1. Every transfer of property made by an insolvent person: a) With intent to defeat, hinder, delay, or prejudice his creditors, or any one or more of them; or b) To or for a creditor with intent to give such creditor an unjust preference over other creditors of such insolvent person, or over any one or more of such creditors; shall as against the creditor or creditors, injured, delayed, prejudiced, or postponed, be utterly void. 2. If any such transfer to or for a creditor has the effect of giving such creditor a preference over the other creditors of such insolvent person, or over any one or more of them, such transfer shall: a) In and with respect to any action or proceeding which is brought, had or taken to impeach or set aside such transfer within sixty days after the giving of the same; or b) If such insolvent person makes an assignment for the benefit of his creditors within sixty days from the giving of such transfer, be presumed to have been made with intent to give such creditor an unjust preference as aforesaid, and to be an unjust preference, whether such transfer was made voluntarily or under pressure. 3. Where the word "creditor" in this section indicates the creditor to whom a preference is given over the other creditors of the insolvent person such word shall be deemed to include any surety, and the indorser of any promissory note, or bill of exchange, who would upon payment by him of the debt, promissory note, or bill of exchange, in respect to which such suretyship was entered into or such indorsement given, become a creditor of the person giving the preference within the meaning of this section.

Acts, 1898, c. 11, § 2. Where an assignment was made to an assignee who was in the employ of the assignor, and the evidence showed that immediately after the making of the assignment the goods were handed to the assignee, who took possession, notified creditors, caused notices to be inserted in the newspapers and proceeded to sell, it was held that there was a sufficient change of possession. — *McMullin v. Buchanan*, (1893), 26 N. S. 146. — Where a deed of assignment containing preferences is declared void under the statutes of Elizabeth, and subsequently, before any lien has been acquired by creditors in an action to set aside the deed, the assignee pays a preferred creditor, he does not become personally liable; the remedy of the creditors is against the property itself wherever it can be found. — *Taylor v. McKinnon*, (1896), 29 N. S. 162; *Taylor v. Cummings*, (1897), 27 S. C. C. 589.

*Assignments for general benefit of creditors and bona fide transactions preserved.*

**Certain transactions not affected.** 5. 1. Nothing in the next preceding section shall apply: a) To any assignment made to an official assignee for the county in which the debtor resides or carries on business for the purpose of paying ratably and proportionately, and without preference or priority, all the creditors of the debtor their just debts; or b) To any bona fide sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties; or c) To any payment of money to a creditor; or d) To any bona fide gift, conveyance, assignment, transfer, or delivery over of any property which is made in consideration of any present actual bona fide payment in money, or by way of security for any present actual bona fide advance of money, or which is made in consideration of any present actual bona fide sale or delivery of property; provided that the money paid, or the property sold or delivered, bears a fair and reasonable relative value to the consideration therefor.

Acts, 1898, c. 11, § 3; 1899, c. 53, § 1. An assignment containing preferences in favour of certain creditors and creating, subject to such preferences, a trust in favour of all the assignor's creditors is an assignment for the general benefit of creditors within the meaning of the *Bill of Sale Act*, and does not require an affidavit of bona fides. — *Kirk v. Chisholm*, (1896), 26 S. C. C. 111; approving *Durkee v. Flint*, (1886), 19 N. S. 487.

**Assignments not to official assignee made void.** 6. [As amended by Acts, 1901, c. 34, § 1.] Every assignment for the general benefit of creditors not made to the official assignee shall be void.

Acts, 1898, c. 11, § 3 (2); Acts, 1899, c. 53, § 1.

**Transfer of consideration.** 7. In case of valid sale of goods, securities, or property, and payment or transfer of the consideration or part thereof, by the purchaser to a creditor of the vendor under circumstances which would render void such a payment or transfer, by the debtor personally and directly, the payment or transfer even though valid as respects the purchaser, shall be void as respects the creditor to whom the same is made.

Acts, 1898, c. 11, § 3 (1).

**Security given up on void payment restored.** 8. If a payment has been made which is void under this Chapter, and any valuable security was given up in con-



sideration of such payment, the creditor shall be entitled to have such security restored, or its value made good to him before, or as a condition of, the return of the payment.

Acts, 1898, c. 11, § 3 (3).

**Payment where security given up not affected.** 9. Nothing in the preceding provisions shall affect: a) Any payment of money to a creditor, where such creditor, by reason or on account of such payment, has lost or been deprived of, or has in good faith given up, any valid security which he held for the payment of the debt so paid, unless the value of the security is restored to the creditor; or b) Any substitution in good faith of one security for another for the same debt as far as the debtor's estate is not thereby lessened in value to the other creditors.

Acts, 1898, c. 11, § 3 (4). A deed of assignment giving first preference to certain named creditors and naming certain other persons creditors of the assignors as preferential creditors for any sums due to them in consequence of the retirement or payment by them of any bill of exchange or promissory notes upon which they were directly or contingently liable with the assignor, and providing further for the distribution of the residue among the remaining creditors executing the assignment, and finally, to pay the surplus to the remaining creditors not executing the deed, was held to be not of an unreasonable character. — *Maguire v. Hart*, (1898), 28 S. C. C. 272; affirming *Hart v. Maguire*, (1896), 29 N. S. 181.

*What shall constitute sufficient assignment.*

**Form, etc., of assignment.** 10. Every assignment made under this Chapter for the general benefit of creditors shall be valid and sufficient if it is made to an official assignee and is in the words following, that is to say: all my personal property which may be seized and sold under execution, and all my real property, credits and effects, or if it is in words to like effect; and an assignment so expressed shall vest in the assignee all the real and personal property, rights, credits, and effects, whether vested or contingent, belonging at the time of the assignment to the assignor, except such as are by law exempt from seizure or sale under execution; subject, however, as regards land to the provisions of *The Registry Act*.

Acts, 1898, c. 11, § 4.

**Mistake etc., not to vitiate.** 11. No advantage shall be taken or gained by any creditor of any mistake, defect, or imperfection in any assignment under this Chapter for the general benefit of creditors if the same can be amended or corrected, and if there is any mistake, defect, or imperfection therein, the same shall be amended by a Judge on any application of the assignee, or of any creditor of the assignor, on such notice being given to other parties concerned as the Judge thinks reasonable, and the amendment, when made, shall have relation back to the date of such assignment.

Acts, 1898, c. 11, § 11.

*Publication and registration of assignment.*

**Notice of assignment.** 12. A notice of any assignment made for the general benefit of creditors under this Chapter shall, as soon as conveniently may be after the execution thereof, be published at least twice in the *Royal Gazette*, and not less than twice in one newspaper at least having a general circulation in the county in which the property assigned is situated.

Acts, 1898, c. 11, § 13.

**Registration of assignment.** 13. 1. A counterpart or copy of every assignment made under this Chapter, together with an affidavit of a witness thereto of the due execution of the assignment of which the copy filed purports to be a copy, shall within five days from the execution thereof be filed: a) If the assignor at the time of the execution of such assignment is a resident of Nova Scotia, in the registry of deeds for the registration district in which he resides; or b) If the assignor is not such a resident, in the registry of deeds for the registration district in which the personal property assigned is situated, or if such property is in more than one such district then in the registry of deeds for the district in which the principal part of such property is situated. 2. The Registrar of Deeds shall file all such assignments presented to him for that purpose, and shall number and enter the same in a book to be kept for that purpose, and shall indorse upon each assignment the time the same was received by him, and such assignments shall be kept in such registry for the inspection of all persons interested therein. 3. The Registrar shall be entitled to receive a fee of fifty cents for filing such assignment and affidavit and for making all proper indorsements in connection therewith.

Acts, 1898, c. 11, § 13 (2).

**Penalties for failure to publish notice and register. 14.** 1. If the said notice of the assignment is not published in the regular number of the *Royal Gazette*, and of such newspaper as is by this Chapter directed, which are respectively issued first after five days from the execution of the assignment by the assignor, or if the assignment is not registered as directed within five days from the execution thereof, the assignor shall be liable to a penalty of twenty-five dollars for every day which passes after the issue of the number of the newspaper in which the notice should have appeared until the same has been published; and a like penalty for every day which passes after the expiration of five days from the execution of the assignment by the assignor, until the same has been registered. 2. The official assignee shall be subject to a like penalty for failure to publish notice of and to register any assignment for every day which passes after the expiration of five days from the delivery of the assignment to him, or of five days after his assent thereto, the burden of proving the time of such delivery or assent being upon the assignee. 3. One-half of any such penalty when recovered shall go to the person suing therefor and the other half for the benefit of the estate of the assignor. 4. The official assignee shall not be liable for any of the penalties imposed in this section unless he has been paid or tendered the cost of advertising and registering the assignment, nor shall he be compelled to act under the assignment until the costs in that behalf are paid or tendered to him.

Acts, 1898, c. 11, § 14.

**Judge may direct publication and registration. 15.** If the assignment is not registered, and notice thereof published, an application may be made by any one interested in the assignment to a Judge to compel the publication and registration thereof, and the Judge shall make an order in that behalf, with or without costs, or upon payment of costs by such person as in his discretion he directs to pay the same.

Acts, 1898, c. 11, § 15.

**Failure to publish, etc., is not to vitiate. 16.** The omission to publish or register as aforesaid, or any irregularity in the publication or registration, shall not invalidate the assignment.

Acts, 1898, c. 11, § 16.

#### *Disposition of estate.*

**Estate not to be removed out of Province. Moneys to be deposited. Penalty. 17.** 1. No property or assets of an estate assigned under the provisions of this Chapter, shall be removed out of Nova Scotia without the order of a Judge. 2. The proceeds of the sales of such estate and any part thereof, and all moneys received on account thereof, shall be deposited by the assignee in an incorporated bank within the Province, and shall not be withdrawn or removed therefrom without the order of a Judge, except in payment of dividends and charges incidental to the winding-up of the estate. 3. Any assignee or other person acting in his stead, or on his behalf, who violates the provisions of this section, shall be liable to a penalty of four hundred dollars, and one half of the said penalty shall go to the person suing therefor, and the other half shall belong to the estate of the assignor; and in default of payment of the said penalty and all costs which are incurred in any action or proceeding for the recovery thereof, such assignee or other person may be imprisoned for any period not exceeding thirty days, and shall be liable to forfeit his office of official assignee.

Acts, 1898, c. 11, § 5.

#### *Change of assignee.*

**Creditors may change assignee. 18.** 1. A majority in number and value of the creditors who have proved claims to the amount of one hundred dollars or upwards, may at their discretion substitute for the official assignee a person residing in the county in which the debtor resided or carried on business at the time of the assignment. 2. An assignee may also be removed and another assignee may be substituted, or an additional assignee may be appointed by a Judge.

Acts, 1898, c. 11, § 8; Acts, 1899, c. 53, § 2.

**Estate, how vested on change of assignee. 19.** Where a new assignee is appointed the estate shall forthwith vest in him without a conveyance or transfer, and he shall register an affidavit of his appointment in the registry of deeds for the registration district in which the original assignment was filed, and the registration of such affidavit shall have the same effect as the execution and registration of a conveyance from the original assignee.

Acts, 1898, c. 11, § 8 (2).



*Recovery of estate.*

**Assignee, power of to sue. Creditor may take proceedings. 20.** 1. Except as in this section is otherwise provided, the assignee shall have the exclusive right of suing for the rescission of agreements, deeds, and instruments or other transactions made or entered into in fraud of creditors, or made or entered into in violation of this Chapter. 2. If at any time any creditor desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the estate, and the assignee under the authority of the creditors refuses or neglects to take such proceeding, after being duly required so to do, the creditor shall have the right to obtain an order of a Judge authorizing him to take the proceeding in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee, as the Judge prescribes; and thereupon any benefit derived from the proceeding shall belong exclusively to the creditor instituting the same for his benefit: provided that if, before such order is granted, the assignee signifies to the Judge his readiness to institute such proceeding for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, shall appertain to the estate. 3. (Added by Acts, 1902, c. 12, § 3.) After an assignment under this Chapter has been made the assignee shall have the right to be substituted for any party who has commenced proceedings under any of the provisions of this Chapter for the rescissions of agreements, deeds and instruments, or other transactions made and entered into in fraud of creditors or in violation of this Chapter, upon such terms as the Court or a Judge orders.

Acts, 1898, c. 11, § 9.

**Money may be recovered as property. 21.** [As amended by Acts, 1904, c. 31, § 1.] 1. In the case of a transfer of any property which in law is invalid against creditors, if the person to whom the transfer was made shall have sold or disposed of, realized or collected, the property or any part thereof, the money or other proceeds may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the transfer was made, and such right to seize and recover shall belong, not only to an assignee for the general benefit of the creditors of the said debtor, but in case there is no such assignment shall exist in favor of all creditors of such debtor. 2. Where there has been no assignment for the benefit of creditors, and the proceeds are of a character to be seizable under execution, they may be seized under the execution of any creditor, and shall be distributable amongst the creditors under *The Creditors' Relief Act* or otherwise. 3. Where there has been no assignment for the benefit of creditors, and whether the proceeds realized as aforesaid are or are not of a character to be seized under execution, an action may be brought therefor by a creditor (whether an execution creditor or not), on behalf of himself and all other creditors, or such other proceedings may be taken as may be necessary to render the said proceeds available for the general benefit of the creditors. 4. This section shall not apply as against innocent purchasers of the property.

*Wages and salaries.*

**Wages etc., of employees, priority of. 22.** Whenever an assignment is made of any real or personal property for the general benefit of creditors under the provisions of this Chapter, the assignee shall pay in priority to the claims of the ordinary or general creditors of the person making the same, the wages or salaries of all persons in the employment of such person at the time of making such assignment or within one month before the making thereof, not exceeding three months' wages or salary; and such persons shall be entitled to rank as ordinary or general creditors for the residue, if any, of their claims.

Acts, 1898, c. 11, § 7.

*Meetings of creditors.*

**First meeting of creditors, how called. 23.** It shall be the duty of the assignee immediately upon the execution of the assignment to inform himself, by reference to the assignor and his records of account, of the names and residences of the assignor's creditors, and within five days from the date of assignment to convene a meeting of the creditors for the giving of directions with reference to the disposal of the

estate, by mailing prepaid and registered to every creditor known to him a circular calling a meeting of creditors to be held at a convenient place to be named in the notice, not later than twelve days after the mailing of such notice, and by advertisement in the *Royal Gazette*; and all other meetings to be held shall be called in like manner.

Acts, 1898, c. 11, §§ 17, 18 (2).

**Assignee may direct as to meeting. 24.** [As amended by Acts, 1901, c. 34, § 2.] If a sufficient number of creditors do not attend such meeting, or fail to give directions with reference to the disposal of the estate, the disposal of the same shall be in the discretion of the assignee.

Acts, 1898, c. 11, § 18 (2).

**Creditors may compel calling of meeting. 25.** 1. If a request in writing, signed by a majority of the creditors having claims duly proved of one hundred dollars and upwards, computed in the manner hereinafter directed, is made upon the assignee, he shall within two days after receiving such request call a meeting of the creditors at a time not later than twelve days after the receipt by him of such request. 2. If the assignee fails to call such meeting when so requested he shall be liable to a penalty of twenty-five dollars for every day after the expiration of the time limited for the calling of the meeting until the meeting is called.

Acts, 1898, c. 11, § 18.

#### *Voting at meetings.*

**Voting at meetings, how regulated. 26.** At any meeting of creditors any creditor may vote in person, or by proxy authorized in writing, but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim, stating the nature and amount thereof.

Acts, 1898, c. 11, § 19.

**Calculation of Votes. 27.** 1. Except for the purpose of making a change of assignee all questions discussed at meetings of creditors shall be decided by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows: For every claim of or over \$ 100, and not exceeding \$ 200 — 1 vote. For every claim of or over \$ 200, and not exceeding \$ 500 — 2 votes. For every claim of or over \$ 500, and not exceeding \$ 1,000 — 3 votes. For every additional \$ 1,000, or fraction thereof — 1 vote. 2. No person shall be entitled to vote on a claim which he has acquired after the assignment unless the entire claim is acquired but this shall not apply to persons acquiring notes, bills or other securities upon which they are liable. 3. In case of a tie, the assignee, or, if there are two assignees, then the assignee appointed by the creditors, or by the Judge, if none has been appointed by the creditors, shall have a casting vote.

Acts, 1898, c. 11, § 20.

#### *Ranking and proof of claims.*

**Individual and partnership estates, ranking upon. 28.** If any assignor executing an assignment under this Chapter for the general benefit of creditors owes debts both individually and as a member of a partnership, or as a member of two different partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other after all the creditors of that other have been paid in full.

Acts, 1898, c. 11, § 6.

**Secured claims. 29.** Every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof; and if such security is on the estate of the debtor, or on the estate of a third party for whom such debtor is only secondarily liable, he shall put a specified value thereon, and the assignee under the authority of the creditors may either consent to the right of the creditor to rank for the claim after deducting such valuation, or he may require from the creditor an assignment of the security at an advance of ten per cent. upon the specified value, to be paid out of the estate as soon as the assignee has realized such security; and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect to the estate.

Acts, 1898, c. 11, § 20 (4).

**Negotiable instruments, ranking in respect to. 30.** If a creditor holds a claim based upon a negotiable instrument, upon which the insolvent is only secondarily liable, and which has not matured at the time of proving the claim, such creditor



in his proof of claim shall set a value upon the liability of the person primarily liable thereon, and the difference between such value and the amount of the claim shall, until the instrument matures, be the amount at which the claim shall be calculated for the purpose of voting at meetings and other purposes, except the payment of dividends thereon, or collocation in the dividend sheets; but after the maturity of such instrument, the claim shall be calculated for all purposes at the full amount, less any sum paid on account thereof by the person primarily liable on such negotiable instrument.

Acts, 1898, c. 11, § 20 (5).

**Valuing of securities. 30 A.** [Added by Acts, 1902, c. 12, § 1.] In case a person claiming to be entitled to rank on the estate assigned holds security for his claim or any part thereof, of such a nature that he is required by this Act to value the same, and he fails to value such security, a Judge may, upon summary application by the assignee or by any other person interested in the debtor's estate, of which application ten days' notice shall be given to such claimant, order that unless a specified value shall be placed on such security, and notified in writing to the assignee within a time to be limited by the order, such claimant shall, in respect of the claim, or the part thereof for which the security is held in case the security is held for part only of the claim, be wholly barred of any right to share in the proceeds of such estate; and if a specified value is not placed on such security and notified in writing to the assignee according to the exigency of the said order, or within such further time as the said Judge may by subsequent order allow, the said claim, or the said part, as the case may be, shall be wholly barred as against such estate, but without prejudice to the liability of the debtor therefor.

**Set off. 31.** The law of set-off shall apply to all claims made against the estate, and also to all actions instituted by the assignee, for the recovery of debts due to the assignor, in the same manner and to the same extent as if the assignor were plaintiff or defendant, as the case may be, except in so far as any claim is affected by the provisions of this Chapter or any other enactment respecting frauds or unjust preferences.

Acts, 1898, c. 11, § 24.

**Particulars of claim. 32.** Every person claiming to be entitled to rank on the estate assigned shall furnish to the assignee particulars of his claim, proved by affidavit, and such vouchers as the nature of the case admits of.

Acts, 1898, c. 11, § 21 (1).

**Proofs of claim, compelling furnishing of. 33.** [As amended by Acts, 1901, c. 34, § 3.] If any person claiming to be entitled to rank on the estate assigned does within a reasonable time after receiving notice of the assignment, and of the name and address of the assignee, furnish to the assignee particulars and proofs of his claim as provided by this Chapter, the assignee may issue a final notice by registered letter mailed to such person requiring him within a time stated in the notice to furnish such particulars and proofs of his claim on penalty of being debarred from participation in the proceeds of the estate; and if the particulars and proofs of such claim are not furnished within the time stated in such notice, the same shall be wholly barred, and the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the debtor therefor. The time stated in such notice shall in the case of creditors resident within the Province be not less than thirty days, and of those resident without the Province, not less than sixty days.

**Claims not accrued due. 34.** A person whose claim has not accrued due shall nevertheless be entitled to prove under the assignment and vote at meetings of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time which has to run until the claim becomes due.

Acts, 1898, c. 11, § 21 (3).

#### *Contestation of claims.*

**Contestation of claims. 35. 1.** At any time after the assignee receives from any person claiming to be entitled to rank on the estate proof of his claim, notice of contestation of the claim may, at the request of any creditor, be served by the assignee upon the claimant. Within thirty days after the receipt of the notice, or such further time as a Judge on application allows, an action shall be brought by the claimant against the assignee to establish the claim, and a copy of the writ in the action served on the assignee; and in default of such action being brought

and writ served within the time aforesaid, the claim to rank on the estate shall be forever barred. 2. The notice by the assignee shall contain the name and place of business of one of the solicitors of the Supreme Court, upon whom service of the writ may be made, and service upon such solicitor shall be deemed sufficient service of the writ.

Acts, 1898, c. 11, § 21 (4, 5).

#### *Dividends.*

**Accounts to be kept. 36.** Upon the expiration of one month from the first meeting of creditors, or as soon as may be after the expiration of such period, but not more than three months thereafter, and afterwards from time to time at intervals of not more than three months, the assignee shall prepare and keep, constantly accessible to the creditors, accounts and statements of his doings as such assignee, and of the position of the estate.

Acts, 1898, c. 11, § 22.

**Dividends, duty of assignee to pay. 37.** As large a dividend as can with safety be paid shall be paid by every assignee under this Chapter, within twelve months from the date of any assignment made thereunder, and earlier if required by vote of the creditors, and thereafter a further dividend shall be paid every six months, and more frequently if required by the creditors, until the estate is wound up and disposed of.

**Dividend sheet. 38.** So soon as a dividend sheet is prepared, notice thereof shall be given by letter mailed, postage prepaid, to each creditor, enclosing an abstract of receipts and disbursements, shewing what interest has been received by the assignee for moneys in his hands, together with a copy of the dividend sheet, noting thereon the claims objected to and stating whether any reservation has or has not been made therefor; and after the expiry of eight days from the date of mailing such notice, abstract, and dividend sheet as aforesaid, dividends on all claims not objected to within that period shall be paid.

Acts, 1898, c. 11, § 23.

#### *Official assignees.*

**Appointment of official assignees. 39.** [As amended by Acts, 1904, c. 31, § 2.] 1. The Governor-in-Council may in each county appoint one or more persons to be official assignees, who shall perform the duties and exercise the powers imposed by this Chapter. 2. Every person so appointed shall before entering upon any duties or exercising any powers as an official assignee, file in the office of the Provincial Secretary a bond to His Majesty in such sum and with such sureties as is directed and approved by the Governor-in-Council, conditioned for the faithful performance of his duties as such official assignee. 3. Every person at present holding office as an official assignee, under this Chapter, shall within thirty days from the passing of this Act file in the office of the Provincial Secretary a bond to His Majesty in such sum and with such sureties as is directed and approved by the Governor-in-Council, conditioned for the faithful performance of his duties as such official assignee. Any such official assignee failing to file such bond within said period shall be subject to immediate removal.

Acts, 1898, c. 11, § 27.

**Their remuneration. 40.** 1. The assignee shall receive such remuneration as is voted to him by the creditors at any meeting, subject to the review of a Judge, if complained of by the assignee or any creditor. 2. [As amended by Acts, 1902, c. 12, § 4]. If no remuneration is voted to the assignee by the creditors, the amount thereof shall be fixed by a Judge, not exceeding five per cent. of the gross proceed of the estate.

Acts, 1898, c. 11, § 12; Acts, 1899, c. 53, § 7.

**Examination of debtor. 41.** [Added by Acts, 1902, c. 12, § 2.] 1. Where there has been an assignment for the benefit of creditors the assignee or assignees, upon resolution passed by a majority vote of the creditors present, or represented at a meeting of the creditors of the assignor regularly called, may without an order examine the assignor or any person who is or has been agent, clerk, servant, officer, or employee of any kind of the assignor, upon oath before a master of the Supreme Court or before a Judge or before any official referee, or may by the order of the Court or of such Judge examine the assignor on oath before any person to be specially named in such order, touching the estate and effects of the assignor, and as to the property and means he had when the earliest of the debts or liabilities



of the assignor existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him. 2. The rules and procedure from time to time in force in the Supreme Court for the examination of judgment debtors shall, as far as may be, apply to an examination under this Act of an assignor in all respects as if the assignor were a judgment debtor. 3. In case such assignor does not attend as required by the said appointment and order, as the case may be, and does not allege a sufficient excuse for not attending, or if attending refuses to disclose his property or his transactions respecting the same or does not make satisfactory answers respecting the same, or if it appears from such examination that such assignor has concealed or made away with his property in order to defeat or defraud his creditors, or any of them, the Court or a Judge may order the assignor to be committed to the common gaol of the county in which he resides for any term not exceeding twelve months.

**Summons and fees.** 42. [Added by Acts, 1902, c. 12, § 2.] 1. Any person liable to be examined under the next preceding section of this Act may be served with an appointment signed by the Judge or officer, or a copy thereof, and where the examination is to take place under an order also with a copy of the order; such service to be made at least forty-eight hours before the time appointed for the examination; and the person to be examined is to be paid the same fees as a witness is paid in cases in the Supreme Court. 2. The examination shall be conducted in the same manner as in the case of an oral examination of an opposite party.

**Compulsory attendance of witnesses.** 43. [Added by Acts, 1902, c. 12, § 2.] Any person liable to be examined under section 41 of this Act, may be compelled to attend and testify and to produce books and documents in the same manner and subject to the same rules of examination and the same consequences of neglecting to attend or refusing to disclose the matters in respect to which he may be examined as in the case of a witness in an action in the Supreme Court.

**Same.** 44. [Added by Acts, 1902, c. 12, § 2.] 1. In case any person has, or is believed or suspected to have, in his possession or power, any book, document, or paper of any kind, relating in whole or in part to the debtor, his dealings or property, such person may upon resolution passed by a majority vote of the creditors present or represented at a regularly called meeting of the creditors of the assignor, exclusive of such person (if he is a creditor) be required by the assignee to produce such statement or statements for the information of such assignee. 2. In case such person fails to produce the said book, document, or other paper within four days of his being served with a copy of the said resolution, and a request of the assignee in that behalf, or in case the assignee is not satisfied that full production has been made, the assignee may without an order examine the said person before any of the officers mentioned in section 41 of this Act, touching any book, document, or other paper which he is supposed to have received. 3. Any such person may be compelled to attend and testify, and to produce upon his examination any book, document, or other paper which under this section he is liable to produce, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness in an action in the Supreme Court.

**Precedence of assignments.** 45. [As added by Acts, 1908, c. 21, § 1.] An assignment for the general benefit of creditors under this Chapter shall take precedence of all attachments and of all executions not completely executed by payment; provided, however, that this section shall not apply to lands.

## b) Acts, 1901, c. 34. An Act to amend the Assignments Act (4th April, 1901).

[This Act amends R. S. 1900, c. 145, §§ 6, 24, and 33, and is there incorporated.]

**c) Acts, 1902, c. 12. An Act to amend Chapter 145 Revised Statutes, 1900, The Assignments Act, (27th March, 1902).**

[This Act adds §§ 30 A, 41—44 to R. S. c. 145, and amends §§ 20 and 40 thereof, all of which are there incorporated.]

**d) Acts, 1904, c. 31. An Act to amend the Assignments Act (3d March, 1904).**

[This Act amends R. S. 1900, c. 145, §§ 21 and 29, and is there incorporated.]

**e) Acts, 1908, c. 21. An Act to amend Chapter 145, Revised Statutes, 1900, The Assignments Act, (16th April, 1908).**

[This Act adds § 45 to R. S. 1900, c. 145, which is there incorporated.]

**f) Acts, 1903, c. 14. An Act to prevent Priority among Execution Creditors (11th April, 1903).**

*Short title.*

**Short title. 1.** This Act may be cited as *The Creditors' Relief Act*.

*Interpretation.*

**Interpretation. 2.** In this Act the word "sheriff" shall include coroners; the word "judge" shall mean the judge of the County Court of the district in which the claims are filed, and shall include a judge of another district authorized to act for the judge of the County Court for the district in which the claims are filed. The word "clerk" means a clerk of the County Court for a county, and includes local deputy clerks.

*Application.*

**Execution creditors, no priority among. 3.** Subject to the provisions hereinafter contained, there shall be no priority among creditors in the distribution of proceeds of personal property taken under execution from the Supreme Court or County Courts.

**Sheriff's duties and creditors right in case of levy. 4. 1.** In case a sheriff levies money upon an execution against the personal property of a debtor where the amount indorsed to levy is one hundred dollars (\$ 100) or upwards he shall forthwith enter in a book to be kept in his office, open to public inspection without charge, a notice stating that such levy has been made, and the amount thereof; and the money shall thereafter be distributed ratably amongst all execution creditors and other creditors whose writs or certificates given under this Act were in the sheriff's hands at the time of the levy, or who shall deliver their writs or certificates to the said sheriff within one month from the entry of the notice; subject, however, to provisions hereinafter contained as to the retention of dividends in the case of contested claims, and to the payment of the costs of the creditor under whose writ the amount was made. **2.** The notice shall state the day upon which it was entered, and may be in form "A" given in the Schedule hereto. **3.** The two preceding subsections shall not apply to any moneys received by a sheriff as the proceeds of a sale of property by him under an interpleader order; but upon the determination of the interpleader issue in favour of the creditors, the moneys, whether in the sheriff's hands or in Court pending the trial of the issue, shall be distributed by the sheriff among the creditors contesting the adverse claims. **4.** Where proceedings are taken by the sheriff or other officer for relief under any provisions relating to interpleader, those creditors only who are parties thereto and who agree to contribute pro rata (in proportion to the amount of their executions or certificates) to the



expense of contesting any adverse claim, shall be entitled to share in any benefit which may be derived from the contestation of such claim so far as may be necessary to satisfy their executions or certificates. The Court or judge may direct that one creditor shall have the carriage of the interpleader proceedings on behalf of all creditors interested, and the costs thereof, as between solicitor and client, shall be a first charge upon the moneys or goods which may be found by the proceedings to be applicable upon the executions or certificates. 5. "Adverse claim" in the next preceding subsection, shall mean any claim to contest which an interpleader issue is directed; and upon any interpleader's application the Court or judge shall have a discretion to allow to other creditors who desire to take part in the contest a reasonable time in which to place their executions in the sheriff's hands, upon such terms as to costs and otherwise as may be just and reasonable. 6. In case the sheriff shall subsequently to the entry of the notice, but within the month, levy a further amount from the property of a debtor, the same shall be dealt with as if such amount had been levied prior to the entry of the notice, but if after the month a further amount is levied, a new notice shall be entered, and the distribution to be made of the amount so levied, and of the further amount levied within a month of the entry of the last mentioned notice, shall be governed by the entry thereof in accordance with the foregoing provisions of the section; and so on from time to time.

**Creditors entitled to share in distribution of money, when.** 5. No creditor shall be entitled to share in the distribution of money levied from the property of a debtor unless, either by the delivery of a writ of execution or otherwise under this Act, he has established a claim against the debtor, either alone or jointly with some other person.

**Creditors may institute proceedings for debts overdue or not, when.** 6. If a debtor permits an execution issued against him, which is indorsed to levy for one hundred dollars (\$ 100) or upwards, under which any of his goods or chattels are seized by a sheriff, to remain unsatisfied in the sheriff's hands till within two days of the time fixed by the sheriff for the sale thereof, or for twenty days after the seizure, the proceedings hereinafter authorized may be taken by other creditors as claimants in respect of debts, whether the same are overdue or not, provided however, that in any proceedings taken in respect of claims not due, there shall be a rebate of interest for the time which would elapse before such debt will be due.

#### *Affidavit of claim.*

**Affidavit of claim.** 7. 1. An affidavit, called the "affidavit of claim," to the effect of form "B" in the Schedule to this Act, of the debt and the particulars thereof may be made in duplicate by the creditor, or by one of the creditors in the case of a joint debt, or by a person cognizant of the facts; and prior to or simultaneously with the filing with the clerk of the County Court of the affidavit, there shall be filed with the clerk the certificate of the sheriff showing that such proceedings have been had against the debtor as entitle the creditor to proceed under this Act. 2. The claimant shall serve on the debtor one of the duplicates, and a notice stating that the claimant intends to file the other duplicate with the clerk of the County Court, by reason of there being in the sheriff's hands a writ of execution against the goods and chattels of the debtor, and that the claimant intends to call on the sheriff to levy the said debt out of the personal property of the debtor under the authority of this Act, which notice is to contain the other particulars shown in form "C", given in the Schedule to this Act. The notice may be either attached to the affidavit served, or indorsed thereon. Where the affidavit and notice are to be served out of Nova Scotia, the judge shall limit the time at which the next step may be taken by the claimant as hereinafter provided. 3. [Is repealed.]

**Service upon debtor and claimant.** 8. 1. An execution debtor may give notice in writing to the sheriff that any claims to be served upon him may be served upon any solicitor in the Province whose name and address shall be given, or by mailing the same to an address stated in the notice. The sheriff shall thereupon enter the notice in the said book in section 4 mentioned, and so long as any execution which was in the sheriff's hands at the time the notice was given shall remain in his hands, shall repeat such entry immediately below any notice (form "A"), given in respect of the execution, unless the notice be revoked in writing, in which case the entry or entries thereof shall be marked "revoked." 2. So long as the notice is not so revoked, an affidavit of claim made under this Act and the accompanying notice may,

where a solicitor is named, be served upon an execution debtor by serving the same upon the solicitor, in accordance with this Act, or if mailing is required, then by mailing the same, enclosed in an envelope, postage prepaid, and registered, to the address given in the notice. 3. In case the notice (form "C") served on a debtor, does not state some place in or within three miles of the office of the clerk of the County Court with whom the affidavit of claim is filed, at which service may be made upon the claimant, or does not give the name and address of some solicitor in the Province who may be served on the claimant's behalf, service of any notice, paper, or document requiring service may be made upon the claimant by mailing the same prepaid and registered, enclosed in an envelope addressed to the claimant at the office of the clerk of the County Court with whom the affidavit of claim is filed. 4. The claimant shall file with the clerk of the County Court of the county the sheriff of which has the execution, one of the said duplicate affidavits of claim, and a copy of the said notice with an affidavit of due service, which affidavit may be in the form "D". 5. [As amended by Acts, 1904, c. 32, § 2.] The copy of the affidavit and the notice shall, where practicable, be personally served upon the debtor by any literate person; but if it be made to appear to a judge that the claimant is unable to effect prompt personal service, the judge may order substituted or other service, or may appoint some act to be done which shall be deemed sufficient service.

#### *Certificate.*

**Certificate to be given by clerk if claim not contested.** 9. 1. If the claim is not contested in manner hereinafter mentioned, the clerk of the County Court with whom the affidavit of claim is filed, after ten days from the day of personal service or services under sub-section 2 of section 8, or within the time mentioned in the order (as the case may be) on application and the filing with him of proof of personal service upon the debtor of an affidavit and notice in accordance with this Act, or proof of compliance with a judge's order in that behalf, or upon the determination of the dispute in favour of the claimant either in whole or in part, shall deliver to the creditor or any one in his behalf a certificate to the effect of form "E" in Schedule hereto, and in case the claim is only disputed as to a part the creditor may elect, by writing, filed with the clerk, to abandon such part and obtain a certificate as to the residue. 2. The certificate shall be delivered to the sheriff, and thereby from the time of the delivery the claimant shall be deemed to be an execution creditor within the meaning of this Act, and to be entitled to share in whatever is made under the executions of creditors in the sheriff's hands, as if he had delivered to the sheriff an execution against the goods, and the certificate shall in like manner bind the goods of the debtor; subject, however, to the debt being afterwards disputed by a creditor as hereinbefore provided. 3. A certificate under this Act shall in interpleader proceedings be deemed to be an execution. 4. If the certificate is obtained by a solicitor, the name and place of abode of the solicitor shall be indorsed thereon; and if the certificate is sued out by the claimant in person there shall be indorsed thereon a statement of some place in or within two miles of the office of the clerk of the County Court with whom the affidavit of claim is filed, at which service may be made upon the claimant, and in default thereof service of any notice, paper, or document requiring service, may be made upon the claimant by mailing the same prepaid and registered, enclosed in an envelope addressed to the claimant at the office of the clerk of the County Court with whom the affidavit of claim is filed. 5. On receiving the certificate, the sheriff shall make a further seizure of the goods and chattels (if any) of the debtor to the amount of the debt so claimed and the sheriff's fees; and so on from time to time, in case more certificates are received after the further seizure so made. 6. A certificate issued under this Act shall remain in force for one year from the date thereof, and no longer unless renewed, but such certificate may from time to time be renewed in the same manner as a writ of execution, but notwithstanding the expiry of a writ or certificate during the month within which a notice of levy having been made is under this Act required to be posted, the said writ and certificate shall, as to any money levied during such month, be deemed to be in full force and effect.

#### *Contestation of claim.*

**Contestation of claim.** 10. 1. The claim may be contested by the execution debtor or by a creditor interested in contesting the same. 2. If the debtor contests



the claim he shall for that purpose file with the clerk of the County Court with whom the affidavit of claim is filed, an affidavit stating that he has a good defence to the claim, or to a specified part of the claim, on the merits, but the Judge may dispense with the affidavit on terms or otherwise. 3. The debtor shall file the affidavit and serve upon the claimant a copy thereof, within ten days after the personal service, or service under subsection 2 of section 8, upon him of the affidavit of claim and the notice, or within the time which the judge by an order dispensing with personal service directs, or within any further time the judge may allow. The affidavit shall have indorsed thereon a statement of some place in or within three miles of the office of the clerk of the County Court, with whom the affidavit of claim is filed, at which service may be made upon the debtor, or the address of some solicitor in the Province who may be served on the debtor's behalf, and in default thereof, service of any notice, paper or document, requiring service, may be made upon the debtor by mailing the same, prepaid and registered, enclosed in an envelope and addressed to the debtor at the office of the clerk of the County Court with whom the affidavit of claim is filed. 4. If the contest is by a creditor, he shall for that purpose file with the clerk of the County Court with whom the affidavit of claim is filed, an affidavit to the effect that he has reason to believe that the debt claimed is not really and in good faith due from the debtor to the claimant; the judge may dispense with the affidavit on terms or otherwise. 5. Such affidavit by a creditor may be so filed and a certificate thereof delivered to the sheriff at any time before distribution is made.

**Sheriff's duty and proceedings to be taken by claimant when claim contested.**

11. 1. In case of a claim being contested by a creditor after a certificate has been placed in the sheriff's hands, the sheriff, unless the judge otherwise orders, shall proceed and levy as if such contestation had not been made, and the sheriff shall until the determination of the contestation, retain in the bank the amount which would be apportionable to the claim if valid, and he shall as soon after the expiry of the said month as practicable distribute the residue of the money made amongst those entitled. 2. The claimant whose claim is contested may apply to a judge for an order allowing his claim and determining the amount; and in case he does not make such application within eight days of his receiving notice of the contestation (or within such further time, if any, as the judge, upon the delay being reasonably accounted for, may allow), he shall be taken to have abandoned his claim; if the contestant is a creditor and there is reason to believe that the contestation is not being carried on in good faith, any other creditor may apply for an order permitting him to intervene in the contest.

**Disputed questions, how tried.** 12. 1. The judge may determine any question in dispute in a summary manner, or may direct an action or issue for the trial of such question, and may make such order as to the costs of the proceedings as may be just. 2. Where there is a dispute as to material facts, and the sum in controversy appears to be over \$ 400, exclusive of costs, the judge shall direct the trial to be in the Supreme Court, and may fix the place of trial, subject to any order which the Supreme Court or a judge thereof may see fit to make in that behalf. In case an issue is directed it shall be tried in all respects as if it had been an action in the Court in which it is ordered to be tried.

**Examination of parties before or at trial.** 13. The same proceedings may be had for the examination of parties and others either before or at the trial as may be taken in an ordinary action, and such proceedings may also be taken prior to the application to the judge and as a foundation therefor.

*Proceedings in other county.*

**Proceedings in other county.** 14. When a creditor has taken in one county the prescribed proceedings in respect of his claim, and desires to establish his claim for the purposes of this Act in another county also, he may do so by obtaining from the said County Court clerk another certificate (form "E"), and delivering the same to the sheriff of such other county, and the delivery of the certificate to the sheriff shall have the same effect for the purposes of this Act in the county in which the same takes place, from the day of the delivery, as if a new notice and affidavit of claim had been served for the county, and other proceedings had in respect thereof under the previous provisions of this Act.

**Creditors entitled to certificate may sue out execution into any county. 15.** A creditor entitled to a certificate from the county clerk may sue out a writ of execution against personal property into any county in the same manner as on an ordinary judgment.

**Decision on contested claim in one county determines amount of claim in other counties. 16.** In case a claim is contested in one county the decision thereon shall as between the parties to it determine the amount of the claim for the purposes of this Act in all other counties in which the claim is filed and the certificate of the clerk of the County Court of the county in which the trial has taken place of the result thereof shall be prima facie proof of the decision. A certificate shall upon payment of a fee of fifty cents be granted to any party to the proceedings who applies therefor.

**Judgment in any Court other than Supreme or County, procedure in case of. 17.** A creditor who has recovered a judgment in any Court other than in the Supreme Court or the County Court may serve upon the sheriff a memorandum of the amount of his judgment and of the costs to which he is entitled, certified under the hand of the clerk of the Court, in case there is such clerk, and if not under the hand of the presiding justice, and the memorandum so served shall have the same effect for the purposes of this Act as if the creditor had delivered to the sheriff a writ of execution directed to the said sheriff from a County Court or a certificate from such clerk under the provisions of this Act.

*Entries to be made by clerk.*

**Entries to be made by clerk. 18. 1.** The clerk of the county Court shall keep a book in which, before granting a certificate or issuing an execution for a claim, he shall enter the following particulars with reference to every claim in respect of which he gives a certificate under this Act: a) The name of the claimant and of the debtor. b) The date of entry of judgment. c) The amount of debt, exclusive of costs. d) The amount of costs. e) If the proceedings have been set aside, this fact, and shortly the reason therefor. **2.** The entry shall for the purposes of this Act be an award of judgment for the debt and costs, and shall, except as to lands, have the same effect as an entry of judgment for non-appearance to a specially indorsed writ. The clerk shall index the entries in the book alphabetically under the name of every debtor. **3.** If the original papers are lost or destroyed, a copy of the entry in the book shall be evidence of all matters therein set forth.

**Judge may give debtor further time to pay claim in certain cases. 19. 1.** With respect to claims, the judge, before or after a certificate is issued by the clerk under this Act or delivered to the sheriff, may, on the application of a debtor and notice to a claimant, give to the debtor further time to pay the claim where the judge is of opinion that this can be done without injustice to the creditor, or may give to the debtor further time on terms which in the opinion of the Judge may be just. There may be successive orders for this purpose, but no claim shall be delayed by such orders for more than three months in all. **2.** This section shall not apply to creditors who have obtained judgment in the ordinary way; and the orders for time are not to prejudice executions obtained by such creditors on such judgments.

*Payment by debtor.*

**Payment by debtor. 20. 1.** In case the debtor, without any sale by the sheriff, pays the full amount owing in respect of the executions and claims in the sheriff's hands at the time of such payment, and no other claim has been filed with the clerk of the County Court, or in case all executions and claims in the sheriff's hands are withdrawn, and any claims served are paid or withdrawn, no notice shall be entered as required by section 4 of this Act, and no further proceedings shall be taken under this Act against the debtor by virtue of the executions having been in the sheriff's hands. **2.** Save as aforesaid, after a certificate has been filed with the sheriff, the withdrawal or expiry of the writ upon which the proceedings are founded, or any stay upon the writ, or the satisfaction of the plaintiff's claims thereon, or the setting aside or return of the writ, shall not affect the proceedings to be taken under this Act, and except so far as the action taken in regard to the writ may affect the amount to be levied, the sheriff shall proceed and levy upon the goods of the debtor as he would have proceeded had the writ or writs remained in his hands in full force to be executed. **3.** In case a debtor voluntarily and without any sale by the sheriff



pays to the sheriff part of the amount owing in respect of an execution or claim in the sheriff's hands, and there is at the time no other execution or claim in the sheriff's hands, the sheriff shall apply the same on the execution or claim so in his hands, and section 4 of this Act shall not apply to the money so received by the sheriff.

*Proceedings on attachment.*

**Proceedings on attachment against goods of absconding debtor. 21.** If either before or after the receipt by the sheriff of an execution against the goods of a debtor a writ of attachment under the rules of the Supreme Court respecting absconding debtors is placed in the hands of the sheriff before he distributes the estate of a debtor, the sheriff shall realize the estate of the debtor as provided by the rules respecting absconding debtors, but the personal property of the debtor when so realized shall be distributed under the provisions of this Act.

*Costs.*

**Costs and fees. 22.** The clerk shall ascertain and state in the said certificate the amount of the costs to which the claimant is entitled as against the debtor. Such costs shall be the following: 1. The fees to be allowed to the sheriff and the clerk of the County Court shall be the same as they respectively are allowed for like proceedings in the County Court. 2. Where there is no contest, the sum of \$ 5.00 for the fees of a solicitor (if employed). 3. In case of a contest, such additional costs as the Judge or taxing master may allow according to the scale of the Supreme Court or County Court applicable to the amount in dispute. 4. The costs of obtaining an order for substituted service, or other similar service, and of such service, or the costs of and incidental to service out of the Province, in either case to be taxed by the Judge, except in Halifax county, where they may be taxed before the taxing master.

*Distribution.*

**Fund in Court belonging to debtor, proceedings in case of. 23.** Where there is in any Court a fund belonging to an execution debtor, or to which he is entitled, the same or a sufficient part thereof to meet the claims in the sheriff's hands may, on the application of the sheriff or any party interested, be paid over to the sheriff and the same shall be deemed to be money levied under execution within the meaning of this Act.

**Where amount levied insufficient to pay debts in full, application of money. 24.** Where the amount levied by the sheriff is not sufficient to pay the execution debts and other claims with costs in full, the money shall be applied to the payment ratably of such debts and costs of the creditors after retaining the sheriff's fees, and after payment in full of the taxed costs and the costs of the execution to the creditor at whose instance and under whose execution the seizure and levy were made.

**Interest, disbursements on renewal of certificate and solicitors' costs on renewal, when to be levied. 25.** The sheriff, if directed by an indorsement upon the certificate, shall, in addition to the amounts named in the certificate, levy interest thereon from the date of the certificate or the date named in that behalf in the certificate, and also the sum of \$ 1.35 for the disbursements on every renewal of the certificate; and where such renewal is made upon the application of a solicitor, he shall levy the further sum of \$ 1.25 for the solicitor's costs on the renewal.

**What poundage sheriff entitled to. 26.** Where money is to be distributed by a sheriff under this Act, the sheriff shall not be entitled to poundage as upon separate writs or claims, but only upon the net proceeds of the estate distributable to him, and at the same rate as if the whole amount had been payable upon one writ.

**Money made upon a writ taken to be made on all writs, etc., entitled to benefit thereof. 27. 1.** Where money is made upon a writ the same shall be taken for the purpose of the sheriff's return, and otherwise to be made upon all the writs or certificates entitled to the benefit thereof, and the sheriff shall, upon payment being made to the person entitled upon such a writ or certificate, indorse thereon a memorandum of the amount so paid, but he shall not, except on the request of the party issuing the writ, or by direction of the Court out of which the same issues, or of a judge having the authority of a judge of such Court, return the writ until the same has been fully satisfied or unless the same has expired by effluxion of time, in which case the sheriff shall make a formal return of the amount made thereon. 2. The

like proceedings may be taken to compel payment by the sheriff of money payable in respect to an execution or other claim as can now be had to compel the return by the sheriff of a writ of execution.

**Entries to be made by sheriff pending distribution of moneys. 28.** The sheriff shall, pending the distribution of moneys levied, keep in the said book mentioned in section 4, in his office a statement according to form "F" in the Schedule hereto, showing, in respect of any debtor of whose property money has been levied, the following particulars: a) The amounts levied and the dates of levy; b) Each execution, certificate or order in his hands at time of entering the notice, "form A," required by section 4, or subsequently received during the month, the amount thereof for debt and costs and the date of receipt, and such statement shall be amended from time to time as an additional amount is levied, or a new execution certificate or order is received.

**Reasonable questions to be answered by sheriff. 29.** The sheriff shall at all times, without fee, answer any reasonable questions which he may be asked orally in respect to the estate of the debtor by a creditor or any one acting on behalf of a creditor, and shall facilitate the obtaining by him of full information as to the value of the estate, and the probable dividend to be realized therefrom in his county, or any other information in connection with the estate which the creditor may reasonably desire to obtain.

**Procedure where money levied insufficient to pay claims in full and time for distribution has come. 30.** Where the money levied is insufficient to pay all claims in full and the time has come for distributing the money levied, the sheriff may forthwith distribute the same, as directed by this Act; or he may first prepare for examination by the debtor and his creditors, a list of the creditors entitled to share in the distribution of the amount levied, with the amount due to each for principal, interest, and costs; the list to be arranged so as among other things to show the amount going to each creditor under the provisions of this Act, and the total amount to be distributed; and the sheriff may deliver or send (prepaid and registered) by post, to each creditor or his solicitor, a copy of the list, with the several particulars aforesaid; and in such case the further proceeding may be as follows: 1. If within eight days after all the said copies have been delivered or posted, or within any further time the Judge may allow, no objection is made as provided by this Act, the sheriff shall make distribution forthwith pursuant to such list. 2. In case an objection is made, as provided by this Act, the sheriff shall forthwith distribute such an amount of the money made to such persons *pari passu* as may not interfere with the effect of the objection in case the same should be allowed. 3. The sheriff may disregard objections which are frivolous or manifestly insufficient to interfere with the distribution proposed, and distribute as if such objections had not been made. 4. Any person prejudiced by the proposed scheme of distribution may contest the same in the manner following, namely, by giving notice in writing to the sheriff, stating therein distinctly his objections to the scheme (or any part thereof), and the grounds of objection, and by at the same time delivering to the sheriff an affidavit of previous service of copy of the notice on the debtor and creditors interested in resisting the objection, unless the Judge shall by order have dispensed with service, or an affidavit of service as the Judge shall have sanctioned. 5. The contestant shall within eight days thereafter apply, upon notice to the Judge for an order adjudicating upon the matter in dispute; and otherwise the contestation shall be taken to be abandoned. The notice may be in the form "G" in the Schedule hereto. 6. The Judge may determine any question in dispute in a summary manner, or may direct an issue or action for the trial of such question, either by a jury or otherwise, and may make such order as to the costs of the proceedings as may be just. 7. In the event of a claimant under a contestation being held not entitled, or only entitled to part of his claim, the money retained pending contestation, or the portion as to which the claimant shall have failed, shall be distributed among the execution creditors and other creditors who would have been entitled thereto, as the same would have been distributed had the claim in respect thereof not been made.

**Provision in case several creditors interested in contestation, 31.** In case several creditors are interested in a contestation, either for or against the same, the Judge shall give such directions for saving the expense of an unnecessary number of parties and trials, and of unnecessary proceedings, as may be just, and he shall direct by whom and in what proportion any costs incurred in the contestation or in any proceed-



ings thereunder shall be paid, and whether any and what costs shall be paid out of the money levied.

**Judge may direct sheriff to levy amount of disputed claim or retain share. 32.** 1. The Judge may, if he sees fit, direct the sheriff to levy for the amount sufficient to cover a claim which is in dispute, or part thereof, or in case it appears to the Judge that it is improbable that the defendant has other sufficient property, he may order the sheriff to retain in his hands during the contestation the share which if the claim is sustained will be apportionable to it, or may make an order combining the orders above authorized, or such similar order as may be just. 2. An order to levy under this section shall clothe the sheriff with the same authority as he would possess under a writ of execution duly issued against the debtor, directing the sheriff to levy the right amount out of the goods of the debtor.

**Decision of County Court Judge or Supreme Court, in banco, effect of. 33.** The decision under this Act of a County Court Judge or the Supreme Court in banco on an appeal, shall bind all creditors, unless it appears that the decision was obtained by fraud or collusion by the parties to the contestation.

**Sheriff to deposit money in bank. 34.** In case a sheriff has money in his hands which, by reason of the provisions of this Act or otherwise, he can not immediately pay over to the execution creditors or other claimants under this Act, he shall deposit the money, whenever the same amounts to \$ 100, in some incorporated bank designated for this purpose, from time to time, by the Lieutenant-Governor-in-Council. The deposit to be made in the name of the sheriff, but to a special account to his name as trustee for the creditors of ..... (the debtor).

#### *Attaching orders.*

**Provision respecting attaching orders and applications therefor by sheriff and creditors. 35.** 1. Where there are in the sheriff's hands several executions and claims, and there are not or do not appear to be sufficient goods to pay all and his own fees, he may apply for an order attaching any debt owing to the execution debtor by any person resident in the county of such sheriff, whether the debt is owing by such person alone or jointly with another person resident or not resident in such county, and to procure the attachment the sheriff may take the same proceedings as a creditor; and in such case a writ of execution or other writ in the course of the proceedings may be directed to him in the same manner as if the attachment were by a creditor; and the proceeds of the debts attached shall be distributed in the same manner as if he had realized the same under execution. 2. In case the sheriff does not take such proceedings, any person entitled to distribution may take the same for the benefit of himself and all other persons entitled to distribution as aforesaid, and the person owing the attached debt shall pay the same to the sheriff. 3. Any judgment creditor who attaches a debt shall be deemed to do so for the benefit of himself and all creditors entitled under this Act; payment of such debt shall be made to the sheriff, who, in making distribution, shall apportion to such judgment creditor a share pro rata, according to the amount, upon his judgment, of the whole amount to be distributed under the provisions of this Act, but such share shall not exceed the amount recovered by the garnishee proceedings unless the judgment creditor has placed a writ in the sheriff's hands. 4. Money garnisheed and paid into the sheriff's hands shall be deemed to be money levied under execution within the meaning of this Act, except that, unless the garnishee proceedings were taken by him, the sheriff shall only be entitled to charge poundage upon such moneys at the rate of one and a quarter per cent. 5. In case a garnishee under an order of the Court pays to the attaching creditor, or in case a garnishee without notice that the sheriff is entitled, pays the amount of his debt into Court and the same is paid out to said creditor, the sheriff may recover from the said creditor the amount so received, after deducting any costs that may have been allowed to him in such garnishee proceeding.

#### *Appeal.*

**Appeals. 36.** If any party to any contestation, matter, or thing upon which a Judge has made or rendered any final order or judgment is dissatisfied with such order or judgment and the same is in respect to a question involving a sum greater than \$ 100, he may appeal therefrom to the Supreme Court in banco, subject to the like practice as nearly as may be as is from time to time in force in respect of appeals

from a County Court or Judge, unless and until rules establishing a different practice shall be made under the provisions of the Judicature Act.

*Miscellaneous.*

**Powers of Judge. 37.** A Judge for the purpose of giving effect to this Act and carrying out its provisions shall have all the powers which a County Court or a Judge thereof has by law for other purposes; and any proceedings wrongly taken under this Act may be set aside by the Judge with or without costs, as he sees fit.

**Provision in case Judge disqualified. 38.** If a Judge is disqualified to act in a matter arising under this Act, the Judge of the County Court of an adjoining district shall have jurisdiction to act in his place.

**Practice and procedure in Supreme and County Court to apply. 39.** Subject to the provisions of this Act the practice and procedure applicable to all proceedings taken under this Act shall be those which for the time being are prescribed for similar proceedings and matters, and under like conditions, in the Supreme and County Courts.

**Powers of amendment. 40.** No proceedings under this Act shall be void for any defect of form; and the rules for amending or otherwise curing irregularities or defects which may from time to time be in force in the County Court shall apply to this Act.

**Fees, further provision. 41.** 1. Besides the fees otherwise authorized to be paid to the clerk of the County Court for his own use, there shall be levied upon the filing of every affidavit of claim, where claim exceeds \$ 80, the sum of fifty cents, to be paid by law stamp in the same manner as in the case of writs of summons for like amounts. 2. Where the claim is contested on the proceedings after the order, the same fees shall be levied as are now payable on like proceedings in the Supreme Court.

**Act not to apply to land. 42.** This Act shall not apply to lands.

**Act not intended to interfere with insolvency laws. 43.** This Act is not intended to interfere with the insolvency laws which may from time to time be in force in this Province, but this Act is intended to be subject to such laws and, subject as aforesaid, to apply to all debtors, whether solvent or not.

**Act not to apply to judgment obtained before going into force hereof. 44.** This Act shall not apply to any judgment obtained before the going into force hereof.

**Act to go into force 1st September, 1903. 45.** This Act shall go into force on the first day of September, A. D. 1903.

*Schedule.*

*Form A.*

(Section 4, subsection 2.)

Notice is hereby given that I have, by virtue of certain executions delivered to me against the goods and chattels of C. D., levied and made out of the property of the said C. D., the sum of \$

And notice is further given that this notice is first posted in my office on the day of , 19 , and that distribution of the said money will be made amongst the creditors of the said C. D., entitled to share therein, at the expiration of one month from the said day of

Dated

, 19

F. G.  
Sheriff.

*Form B.*

(Section 7, subsection 1.)

**Affidavit of claim.**

*The Creditors' Relief Act.*

In the County Court for District Number

A. B.

Claimant.

vs.

C. D.

Debtor.

I. A. B., of , in the county of , merchant (or as the case may be), make oath and say:



1. I am the above named claimant (or the duly authorized agent of the claimant in this behalf), and have a personal knowledge of the matter hereinafter deposed to.

2. The above named debtor is justly and truly indebted to me (or to the above named claimant) in the sum of \$ \_\_\_\_\_ for (here state shortly the nature and particulars of the claim as they are required to be stated upon a specially indorsed writ).

Sworn before me at \_\_\_\_\_ this \_\_\_\_\_ }  
day of \_\_\_\_\_ A. D. 19 \_\_\_\_\_ }

### Form C.

(Section 7, subsection 2.)

#### Notice to be served with claim.

##### *The Creditors' Relief Act.*

In the County Court for District number  
A. B. Claimant.

vs.

C. D. Debtor.

To the above (or within) named debtor.

Take notice that the claimant intends to file with the clerk of the County Court for district number \_\_\_\_\_ (or as the case may be), the original affidavit of claim of which a duplicate is served herewith, and that this proceeding is taken by reason of there being in the hands of the sheriff of the county of \_\_\_\_\_ a writ of execution against your goods and chattels and that the claimant intends to call on the sheriff to levy the amount of the said debt from your personal property under the authority of The Creditors' Relief Act.

And further take notice that in case you desire to contest the said claim, or any part thereof you must, within ten days after the service of this notice upon you, file with the clerk of the said Court at \_\_\_\_\_ an affidavit stating that you have a good defence to the said claim on the merits, or that you have such defence to a specified part of the claim, otherwise such claim will be treated as admitted by you, or may be so treated as to the part not contested.

You are further hereby notified that unless you indorse upon such affidavit filed by you a statement of some place in or within three miles of the office of the said clerk at which service may be made upon you, or the address of some solicitor in the Province of Nova Scotia, who may be served on your behalf, service may be made upon you of any notice, paper, or document requiring service, by mailing the same, enclosed in an envelope, addressed to you at the office of the said clerk.

[Note. In case the above notice is indorsed upon the copy of the affidavit served, the heading of the notice may be omitted. Where further time is given by a Judge, the notice shall be varied accordingly.]

### Form D.

(Section 8, subsection 4.)

#### Affidavit of service of claim.

##### *The Creditors' Relief Act.*

In the County Court for District Number  
A. B. Claimant.

vs.

C. D. Debtor.

I, G. H., of \_\_\_\_\_ in the County of \_\_\_\_\_ make oath, and say:  
1. That I did, on the \_\_\_\_\_ day of \_\_\_\_\_ personally serve C. D., the above named debtor, with an original affidavit identical with the annexed affidavit, and that there was at the time the said affidavit was so served attached to (or indorsed upon) the said affidavit so served a true copy of the notice addressed to the debtor, now attached to (or indorsed upon) the said annexed affidavit.

Sworn before me at \_\_\_\_\_ this \_\_\_\_\_ }  
day of \_\_\_\_\_ A. D. 19 \_\_\_\_\_ }

### Form E.

(Section 9, subsection 1, and section 14.)

#### Certificate of proof of claim.

##### *The Creditors' Relief Act.*

In the County Court for District Number  
A. B. Claimant.

vs.

C. D. Debtor.

I, \_\_\_\_\_ clerk for the County Court for district number \_\_\_\_\_ do hereby certify that the above named claimant did on the \_\_\_\_\_ day of \_\_\_\_\_ file with me a claim against the above named debtor, for the sum of \_\_\_\_\_, together with an affidavit of personal service thereof (or as the case may require), and of the notice required by the Creditors' Relief Act, upon the said debtor, and that it thereby appears that such service was made upon the said debtor on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

And I further certify that the debtor has not contested the said claim (or has only contested the sum of \_\_\_\_\_ portion of the said claim, as the case may be), and that the claimant is entitled to the sum of \_\_\_\_\_ against the said debtor, and the further sum of \_\_\_\_\_ for costs.

*Form F.*

(Section 28.)

**Sheriff's statement of executions on hand against C. D.**

Cause.	Proceedings.	Claims Without Costs.	Costs.	Date of Receipt by Sheriff.	Amount levied.	Date of Levy.
A. B. v. C. D.	Fi. Fa. goods and lands.	\$ 500	30	18th Feb., 1903	\$500	1st May, 1903.
F. G. & C. D.	Fi. Fa. goods and lands.	400	20	1st Mar., 1903	300	3d May, 1903, Nothing against F. G.
K. L. v. C. D.	Garnishee Order.	500	30		300	10th May, 1903.
M. N. v. C. D.	Creditors' Certificate.	400	5	15th May, 1903		

*Form G.*

(Section 30, subsection 5.)

**Contestation of scheme of distribution.**

*The Creditors' Relief Act.*

In the County Court for District number \_\_\_\_\_ Claimant.

A. B. vs.

C. D. Debtor.

To F. G. and M. N., claimants of moneys levied by the sheriff of the county of \_\_\_\_\_ out of the estate of C. D.

Take notice that I will on the \_\_\_\_\_ day of \_\_\_\_\_ next, apply to the Judge of the County Court for district number \_\_\_\_\_, at his chambers at the court house in the town of \_\_\_\_\_ for an order adjudicating upon the right of you, the said \_\_\_\_\_ to rank upon the said moneys for any amount whatever (or as the case may be); and further take notice that I will, upon the said application read the affidavits of E. F. and X. Y., filed with the clerk of the said Court.

Dated, etc.

**g) Acts, 1904, c. 32. An Act to amend Chapter 14 of the Acts of 1903, entitled the Creditors' Relief Act (3d March, 1904).**

[1. Repeals Acts, 1904, c. 14, § 7 (3).]

[2. Amends Acts, 1904, c. 14, § 8 (5), and is there incorporated.]

## VII. Ontario.

### Law in force.

By an Act of the Provincial Parliament of Upper Canada, of 15th October, 1792. the law of England relating to property and civil rights as in force at that date was adopted. An identical provision is now in force<sup>1)</sup>. The law in force in Ontario

<sup>1)</sup> 10 Edw. 7, c. 45, reprinted in full, *infra*.



relative to property and civil right is the law of England of 15th October, 1792, except so far as such law has been repealed, altered, varied, modified, or affected by any Act of the Imperial Parliament, having the force of law in Ontario, or by any Act of the late Province of Upper Canada, or of the Province of Canada, or of the Province of Ontario, or of the Dominion Parliament.

## Statutes.<sup>1)</sup>

### Application of Law.

#### 10 Edw. 7, c. 45. An Act respecting the Application of the Law of England in certain Matters (7th March, 1910).

**Short title.** 1. This Act may be cited as *The Property and Civil Rights Act*.

**The law of England on 15th Oct., 1792, to be the rule of decision.** 2. 1. In all matters of controversy relative to property and civil rights, resort shall be had to the laws of England as they stood on the 15th day of October, 1792, as the rule for the decision of the same, and all matters relative to testimony and legal proof in the investigation of fact and the forms thereof in the Courts of Ontario shall be regulated by the rules of evidence established in England, as they existed on that day, except so far as such laws and rules have been since repealed, altered, varied, modified or affected by any Act of the Imperial Parliament, still having the force of law in Ontario, or by any Act of the late Province of Upper Canada, or of the Province of Canada, or of the Province of Ontario, still having the force of law in Ontario. 2. Nothing in this section shall extend to any of the laws of England respecting the maintenance of the poor.

R. S. O. 1897, c. 111, § 1.

**Repeal.** 3. Chapter 111 of the Revised Statutes of Ontario is repealed.

### Partnership.

#### a) 10 Edw. 7, c. 67. An Act respecting Limited Partnerships (19th March, 1910).<sup>2)</sup>

**Short title.** 1. This Act may be cited as *The Limited Partnership Act*.

**Limited partnerships may be formed.** 2. A limited partnership for the transaction of any mercantile, mechanical, manufacturing or other business within Ontario, except banking, the construction or operation of railways, or the business of insurance, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities hereinafter mentioned.

R. S. O. 1897, c. 151, § 1; Imp. § 4. The business of building and running steam boats may be carried on by a limited partnership. — *Bowes v. Holland*, (1856), 14 U. C. Q. B. 316.

**Of whom to consist.** 3. The partnership may consist of one or more persons, who shall be called general partners, and of one or more persons who contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners.

R. S. O. 1897, c. 151, § 2; Imp. § 4 (2). Where the special partners do not contribute actual cash towards the capital of the partnership they become liable as general partners. The giving of a note is not sufficient. — *Benedict v. Van Allen*, (1858), 17 U. C. Q. B. 234; *Patterson v. Holland*, (1858), 7 Gr. 1; see s. c. (1858), 6 Gr. 414; *Watts v. Taft*, (1859), 16 U. C. Q. B. 256.

**Liability of general and special partners.** 4. General partners shall be jointly and severally responsible as general partners are by law, but special partners shall not be liable for the debts of the partnership beyond the amounts by them contributed to the capital.

R. S. O. 1897, c. 151, § 3; Imp. § 4 (2).

<sup>1)</sup> As in force 1st January, 1912. — <sup>2)</sup> The references in the notes (Imp.) are to the Imperial *Limited Partnerships Act, 1907*, (7 Edw. 7, c. 24).

**General partners only to transact business, etc. 5.** The general partners only shall be authorized to transact business and sign for the partnership, and to bind the same.

R. S. O. 1897, c. 151, § 4; Imp. § 6.

**Certificate to be signed. Contents. 6.** The persons desirous of forming such partnership shall make and each of them shall sign a certificate, Form 1, which shall contain: a) The name under which the partnership business is to be carried on; b) The general nature of the business intended to be carried on; c) The names of all the general and special partners, distinguishing which are general and which are special partners, and their usual places of residence; d) The amount of capital which each special partner has contributed; e) The time when the partnership is to commence and the time at which it is to terminate; f) The principal place of business of the partnership.

R. S. O. 1897, c. 151, § 5; Imp. § 8.

**Execution of. 7.** The certificate shall be signed by the persons forming the partnership, before a notary public, who shall certify to the execution of the same.

R. S. O. 1897, c. 151, § 6.

**Where to be filed. 8.** The certificate so signed and certified shall be filed in the office of the clerk of the County or District Court of the county or district in which the principal place of business named in the certificate is situate, and shall be recorded by him at full length in a book to be kept for that purpose and open to public inspection.

R. S. O. 1897, c. 151, § 7; Imp. § 8.

**Fees. 9.** For filing and recording the certificate the clerk shall be entitled to receive the sum of twenty-five cents, and shall also be entitled to receive from every person searching in the book where such certificate is so recorded the sum of ten cents for each search.

R. S. O. 1897, c. 151, § 8.

**Partnership not formed until certificate filed. 10.** No such partnership shall be deemed to have been formed until the certificate has been made, certified, and filed; and if any false statement is made in the certificate, all the members of the partnership shall be liable for all the engagements thereof as general partners.

R. S. O. 1897, c. 151, § 9; Imp. § 5.

**Certificates of continuance. 11.** Every renewal or continuance of a partnership beyond the time originally fixed for its duration, shall be certified, filed, and recorded in the manner herein required for its original formation; and every partnership otherwise renewed or continued, shall be deemed a general partnership.

R. S. O. 1897, c. 151, § 10.

**What alterations to be deemed a dissolution. 12.** Every alteration made in the partnership name, in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other manner specified in the original certificate shall be deemed a dissolution of the partnership, and every such partnership in any manner carried on after any such alteration has been made shall be deemed a general partnership, unless renewed as a limited partnership, according to the provisions of the next preceding section.

R. S. O. 1897, c. 151, § 11.

**Partnership name. 13.** The business of the partnership shall be conducted under a name in which the names of the general partners, or some or one of them only shall be used; and if the name of a special partner is used therein with his privity, he shall be deemed a general partner.

R. S. O. 1897, c. 151, § 12.

**Restrictions upon stock of special partners. 14.** No part of the sum which a special partner has contributed to the capital shall be withdrawn by him, or paid or transferred to him as dividends, profits, or otherwise, during the continuance of the partnership; but any partner may annually receive interest at a rate not exceeding five per cent. per annum on the sum so contributed by him, if the payment of such interest does not reduce the original amount of the capital; and if, after the payment of such interest, any profits remain to be divided, he may also receive his share of such profits.

R. S. O. 1897, c. 151, § 14.

**When special partner liable to refund. 15.** If by the payment of interest or profits to a special partner the original capital has been reduced, he shall be liable to restore the amount by which his share of the capital has been so reduced with interest.

R. S. O. 1897, c. 151, § 15.



**Privileges of special partners. 16.** A special partner may from time to time examine into the state and progress of the partnership business, and may advise as to its management; but he shall not transact any business on account of the partnership, or be employed for that purpose as agent, or otherwise; and if he does so, he shall be deemed a general partner.

R. S. O. 1897, c. 151, § 16; Imp. § 6. See § 5, *supra*. Where the special partners elected a board of directors to advise the general partner, and the board interfered in the transaction of the business, the members of the board became liable as general partners. — *Whittemore v. Macdonell*, (1856), 6 U. C. C. P. 547; *Bowes v. Holland*, (1856), 14 U. C. Q. B. 316. Where a special partner has once become liable under this section, his liability does not cease when he ceases to intermeddle. — *Hutchinson v. Bowes*, (1856), 15 U. C. Q. B. 156. In such case it is not necessary for the plaintiff to show that the limited partnership was regularly formed under the Act. — *Davis v. Bowes*, (1856), 15 U. C. Q. B. 280. *Semble*, where a special partner has become a general partner by intermeddling, he is such not alone as to creditors, but also as to the other partners. — *Bowes v. Holland*, (1856), 14 U. C. Q. B. 316.

**General partners liable to account. 17.** The general partners shall be liable to account to each other and to the special partners for their management of the business in like manner as other partners.

R. S. O. 1897, c. 151, § 17.

**Creditors preferred to special partners. 18.** In case of the insolvency or bankruptcy of the partnership, a special partner shall not, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership have been satisfied.

R. S. O. 1897, c. 151, § 18.

**No premature dissolution without notice, etc. 19.** No dissolution of such partnership by the acts of the parties shall take place before the time specified in the certificate of its formation or of its renewal, until a notice of such dissolution has been filed in the office in which the original certificate was filed and has been published once in each week, for three weeks, in a newspaper published in the county or district where the partnership has its principal place of business, and for the same time in the *Ontario Gazette*.

R. S. O. 1897, c. 151, § 19.

**Repeal. 20.** Chapter 151 of the Revised Statutes, 1897, and all amendments thereto are repealed.

#### *Form 1. Certificate.*

We, the undersigned, do hereby certify that we have entered into partnership under the name of (*B. D. & Co.*) as (*Grocers and Commission Merchants*), which firm consists of (*A. B.*) residing usually at \_\_\_\_\_, and (*C. D.*) residing usually at \_\_\_\_\_, as General Partners; and (*E. F.*) residing usually at \_\_\_\_\_, and (*G. H.*) residing usually at \_\_\_\_\_, as Special Partners. The said (*E. F.*) having contributed (\$ 4000) and the said (*G. H.*) (\$ 8000) to the Capital of the Partnership.

The principal place of business of the Partnership is at \_\_\_\_\_,

The said Partnership is to commence on the day of \_\_\_\_\_ 19\_\_\_\_, and is to terminate on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signed,) *A. B.*  
*C. D.*  
*E. F.*  
*G. H.*

Signed in the presence of me,

*L. M.*

Notary Public.

### **b) 10 Edw. 7, c. 68. An Act respecting the Registration of Partnerships (19th March, 1910).**

**Short title. 1.** This Act may be cited as *The Partnership Registration Act*.

**Persons in partnership to deliver a declaration to the Registrar. When some of the parties are absent. 2. 1.** Persons associated in partnership for trading, manufacturing or mining purposes shall cause to be filed with the Registrar of the registry division in which they carry or intend to carry on business, a declaration in writing, Form 1, signed by all the members of the partnership. 2. Where at the time of

making the declaration any member is absent from the place where the partnership carries on or intends to carry on business, the declaration shall be signed by the members present in their own names, and also for any absent member, under his special authority to that effect, and such special authority shall at the same time be filed with the Registrar and annexed to the declaration.

R. S. O. 1897, c. 152, § 1. The printing and publishing of a newspaper is a "trading purpose" within the meaning of this section. — *Pinkerton v. Ross*, (1873), 33 U. C. Q. B. 508.

**Requisites of declaration.** 3. The declaration shall contain the names, surnames, additions, and residences of every partner, and the name under which they carry on or intend to carry on business and shall state also the time during which the partnership has subsisted, and shall also state that the persons therein named are the only members of the partnership.

R. S. O. 1897, c. 152, § 2.

**Time of filing declaration.** 4. The declaration shall be filed within six months next after the formation of the partnership.

R. S. O. 1897, c. 152, § 3.

**Declaration where change in partnership.** 5. 1. A similar declaration shall in like manner be filed whenever any change takes place in the membership of the partnership, or in the name under which it carries on business, and every such declaration shall state the change in the membership of the partnership or in its name. 2. The declaration shall be filed within six months after the change takes place.

R. S. O. 1897, c. 152, § 4. Where a partner retires from a firm and a new firm name is adopted, the retiring partner is not liable on a note given in renewal of a note of the old firm, although signed in the old firm name, where the payee accepted the new note with knowledge of the change in the firm. — *Bank of Toronto v. Nixon*, (1879), 4 A. R. 346; reversing s. c. (1878), 43 U. C. Q. B. 447. But see § 7, *infra*.

**Allegations in the declaration not to be controvertible by parties signing.** 6. The statements made in any declaration shall not be controvertible by any person who has signed the same, nor as against any person not being a member of the partnership by any person who has signed the same, or who was really a member of the partnership therein mentioned at the time the declaration was made.

R. S. O. 1897, c. 152, § 5. This section does not apply to penal actions brought against a member of a firm for neglecting to file the declaration. In such cases the defendant may introduce evidence to show that the partnership was in fact formed at a date different from that set forth in the declaration. — *Cassidy v. Henry*, (1871), 31 U. C. Q. B. 345.

**Declaration of dissolution of partnership.** 7. Upon the dissolution of a partnership, any or all of the persons who composed the partnership may sign a declaration, Form 2, certifying the dissolution of the partnership.

R. S. O. 1897, c. 152, § 6. Where a declaration of dissolution is not filed the old partners continue to be liable. — *Oakville v. Andrews*, (1905), 10 O. L. R. 709; 6 O. W. R. 454; see also s. c. 3 O. W. R. 820.

**Persons signing declaration to be deemed partners till new declaration is filed.** **Liability of partners failing to declare the same.** 8. 1. Until a new declaration is made and filed by him, or by his partners or any of them, no person who signed the declaration filed shall be deemed to have ceased to be a partner. 2. Nothing herein shall exempt from liability any person who, being a partner, fails to make and file the prescribed declaration, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or they may be sued alone, and if judgment is recovered against them, he may be sued on the original cause of action upon which the judgment was recovered.

R. S. O. 1897, c. 152, § 7.

**A person whose business style indicates plurality to file a declaration.** **Form of declaration.** 9. 1. Every person engaged in business for trading, manufacturing, or mining purposes, who is not associated in partnership with any other person, but uses as his business style some name or designation other than his own name, or who in such style uses his own name with the addition of "and Company," or some other word or phrase indicating a plurality of members in the firm, shall cause to be filed with the registrar of the registry division in which such person carries on or intends to carry on business, a declaration in writing, signed by such person. 2. Such declaration shall contain the name, surname, addition, and residence of the person making the same, and the name under which he carries on or intends to carry on business, and shall also state that no other person is associated with him in partnership; and such declaration shall be filed within six months of the time when such name is first used.



**Penalty for non-compliance. 10.** Every member of a partnership or other person required to file a declaration under the provisions of this Act who fails to comply with the requirements thereof shall incur a penalty of \$ 100, to be recovered in any Court of competent jurisdiction.

R. S. O. 1897, c. 152, §§ 9—11. The *qui tam* action may be brought by several plaintiffs jointly, and the mere fact that one of the plaintiffs is not resident within the jurisdiction is immaterial. — *Chaput v. Roberts*, (1887), 14 A. R. 354.

**Registrar to record declaration. Registrar's fee for filing. Registrar to keep two indexes. Form of "Firm Index." Form of "Individual Index." Registrar's fees for certain services. 11.** 1. The Registrar shall enter the declarations in the order in which the same are received in a book to be by him kept for that purpose, which shall at all times during office hours be open to the inspection of the public without charge. 2. For filing and entering each declaration the Registrar shall be entitled to receive from the person filing the same fifty cents if it does not contain more than two hundred words, and at the rate of ten cents per hundred words for all above the number of two hundred. 3. The Registrar shall keep two alphabetical index books of all declarations filed with him. 4. In one of such books, hereinafter called, the "Firm Index" the Registrar shall enter in alphabetical order the names of the firms in respect to which declarations have been filed with him, and shall place opposite each entry the names of the persons composing the firm, and the date of the receipt by him of the declaration, in the manner shewn in Form 3. 5. In the second of such books, hereinafter called the "Individual Index," the Registrar shall enter in alphabetical order the names of the respective members of each firm, and shall place opposite the entry the names of the firm of which each person is a member, and the date of the receipt of the declaration, in the manner shewn in Form 4. 6. The Registrar shall be entitled for search-  
es to the following fees and no more:

For searching in Firm Index—each firm ten cents;

For searching in Individual Index—each name ten cents;

For each certificate, when required—twenty-five cents.

R. S. O. 1897, c. 152, §§ 12—16.

**Who to furnish registry books. 12.** The books required for the purposes of this Act shall be furnished by the municipality whose duty it is to furnish registry books, or in case of his default, by the Registrar, in the same manner as other registry books.

R. S. O. 1897, c. 152, § 17.

**Cheese manufacturing companies excepted. 13.** This Act shall not apply to associations of individuals for the manufacture of butter or cheese and contributing produce from their dairies for that purpose.

R. S. O. 1897 c. 152, § 18.

**Act not to affect rights of partners inter se. 14.** Nothing in this Act shall affect the rights of partners with regard to each other.

R. S. O. 1897, c. 152, § 7.

**Repeal. 15.** Chapter 152 of the Revised Statutes, 1897, and all amendments thereto are repealed.

#### *Form 1. Declaration of Partnership.*

County (or District) of \_\_\_\_\_  
 We \_\_\_\_\_ of \_\_\_\_\_ in \_\_\_\_\_ (occupation) and  
 of \_\_\_\_\_ in \_\_\_\_\_ (occupation), hereby certify  
 at \_\_\_\_\_ 1. That we have carried on and intend to carry on trade and business as  
 \_\_\_\_\_ in partnership, under the name of \_\_\_\_\_  
 2. That the said partnership has subsisted since the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
 3. And that we are and have been since the said day the only members of the said partnership.  
 Witness our hands at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
 \_\_\_\_\_  
 A. B.  
 C. D.

#### *Form 2. Declaration of Dissolution of Partnership.*

County (or District) I, \_\_\_\_\_  
 of \_\_\_\_\_ formerly a member of the firm carrying on business as \_\_\_\_\_  
 at \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_, under the name of \_\_\_\_\_  
 do hereby certify that the said partnership was on the \_\_\_\_\_ day of \_\_\_\_\_  
 19\_\_\_\_, dissolved.  
 Witness my hand, at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_  
 19\_\_\_\_  
 \_\_\_\_\_  
 A. B.

*Form 3. Firm Index.*

Name of Firm.	Names of Persons Composing the Firm.	Date of Filing Declaration.
Abbott, Black & Co.	George Abbott, John Black, Edward Cook	10th February, 19—.
Bernard, Green & Jones	John Bernard, Edward Green, John Jones	12th February, 19—.
Cook (Thos.) & Co.	Thomas Cook, James Wilson . . . . .	14th February, 19—.
Dadson, William	William Dadson, Thomas Jones, Robert Watson, William Wilberforce, James Johnson . . . . .	14th February, 19—.
Dick & Co.	Richard Dick . . . . .	15th May, 19—.
Dow (Wm.) & Sons	William Dow . . . . .	19th May, 19—.

R. S. O. 1897, c. 152, Sched. C.

*Form 4. Individual Index.*

Name of Individual.	Name of Firm of which a Member.	Date of Filing Declaration.
Abbott, George	Abbott, Black & Co. . . . .	10th February, 19—.
Black, John	Abbott, Black & Co. . . . .	10th February, 19—.
Bernard, John	Bernard, Green & Jones . . . . .	12th February, 19—.
Cook, Edward	Abbott, Black & Co. . . . .	10th February, 19—.
Cook, Thomas	Thomas Cook & Co. . . . .	14th February, 19—.
Dadson, William	William Dadson . . . . .	14th February, 19—.
Dick, Richard	Dick & Co. . . . .	15th May, 19—.
Dow, William	Wm. Dow & Sons . . . . .	19th May, 19—.

R. S. O. 1897, c. 152, Sched. D.

**Companies.****a) 7 Edw. 7, c. 34. An Act respecting Joint Stock and other Companies (20th April, 1907).<sup>1)</sup>****Short title. 1.** This Act may be cited as *The Ontario Companies Act*.

R. S. O., c. 191, § 1; Imp. § 295.

**Interpretation. 2.** a) The word "corporation" in this Act includes all companies, whether with or without capital, and whether the capital thereof is divided into shares or not. b) The word "company" in this Act means only a company having a capital divided into shares.

*Part I. Incorporation, Re-incorporation, Amalgamation.***Corporations formed for certain purposes may be incorporated by letters patent.**

3. [As amended by 8 Edw. 7 c. 43, § 1 and 10 Edw. 7, c. 80, § 1.] 1. The Lieutenant-Governor may, by letters patent, grant a charter to any number of persons, not less than five, of the age of twenty-one years, who petition therefor, constituting such persons and any others who have or may thereafter become subscribers to the memorandum or agreement hereafter referred to, a body corporate and politic with or without capital divided into shares, for any of the purposes to which the authority of the Legislature of Ontario extends, except those of railway companies within the meaning of The Ontario Railway Act, insurance companies within the meaning of The Ontario Insurance Act, and loan corporations within the meaning of The Loan Corporations Act. 2. Notwithstanding anything in this Act, the Provincial Secretary may, under the seal of his office, have, use, exercise, and enjoy any power, right, or authority conferred by this Act on the Lieutenant-Governor, but not including those conferred on the Lieutenant-Governor in Council.

R. S. O., c. 191, § 9; Imp. § 1. A company incorporated under the authority of a Provincial Legislature to carry on business of fire insurance, is not inherently incapable of entering,

<sup>1)</sup> The references in the notes are to the Ontario Acts indicated, and (Imp.) to the Imperial *Companies (Consolidation) Act, 1908*, (8 Edw. 7, c. 69).



outside the bounds of the Province of its origin, into a valid contract of insurance, relating to property also outside of those limits. — *Canadian Pacific Railway Co. v. Ottawa Fire Insurance Co.*, (1906), 39 S. C. R. 405; but see dissenting opinions of Fitzpatrick, C. J., and Davies, J. See also *Kerlin Bros. v. Ontario Pipe Line Co.*, (1908), 11 O. W. R. 797. For a case defining the power of the Dominion Parliament and Provincial Legislatures over railways, see *Canadian Pacific Railway v. Notre Dame de Bonsecours*, (1899) A. C. 372. For further cases on the power of Provincial Legislatures to incorporate, see *Queddy River, etc., Co. v. Davidson*, (1883), 10 S. C. R. 222; *Boyle v. Victoria-Yukon Trading Co.*, (1902), 9 B. C. 213; *Cushing v. Dupuy*, (1880), 5 A. C. 409; *Schoolbred v. Clarke*, (1890), 17 S. C. R. 265; *Attorney-General Ontario v. Attorney-General Dominion*, (1894) A. C. 189; *Bank of Toronto v. Lamb*, (1887), 12 A. C. 575; *Tennant v. Union Bank*, (1894) A. C. 31.

**Contents and form of petition. Memorandum of agreement. Petitioners to be bona fide holders of shares.** 4. 1. The applicants for incorporation of a company with capital divided into shares, may petition the Lieutenant-Governor, through the Provincial Secretary, for the grant of letters patent. The petition of the applicants shall show: a) The proposed corporate name of the company; b) The objects for which the company is to be incorporated; c) The place within Ontario where the head office of the company is to be situated; d) The amount of the capital of the company, the number of shares, and the amount of each share; e) The name in full, the place of residence, and the calling of each of the applicants; f) The names of the applicants, not less than three, who are to be provisional directors of the company. 2. The petition may be in the form or to the effect set out in Schedule A to this Act, and shall be accompanied by a memorandum of agreement, executed in duplicate in the form or to the effect set out in Schedule B to this Act. 3. Each petitioner shall be the bona fide holder in his own right of the share or shares for which he has subscribed in the memorandum of agreement. 4. The petition may ask to have embodied in the letters patent any provision which, under this Act, might be embodied in any by-law of the company when incorporated.

R. S. O., c. 191, § 10; Imp. § 3. See § 27 for use of the word "Limited." The name "British Columbia Permanent Loan and Savings Co." was held not to be so similar to "Canadian Permanent Loan and Savings Co." as to be calculated to deceive the public. — *Canada Permanent v. British Columbia Permanent*, (1898), 6 B. C. 377; see also *British Columbia Permanent v. Wooton*, (1898), 6 B. C. 382. For rule in regard to the use of the word "Royal," see *Warde, Shareholders' and Directors' Manual*, p. 274. Original subscribers must be persons sui juris. If the applicants form only the minimum number, the infancy of one prevents the company from acquiring a legal existence. — *Hamilton v. Townsend*, (1886), 13 O. A. R. 534. The objects of the company should be set out with care and precision, since it is well settled that a company can do only those things which are included among its specified objects or are reasonably incidental thereto, or which are specifically authorized by the charter. For an enumeration of the general clauses which should be inserted in the charter, see *Masten, Company Law*, p. 47. For details of the procedure of incorporation, see *Parker and Clark, Company Law*, p. 8.

**Petition for incorporation without share capital. Memorandum of agreement.** 5. 1. The applicants for the incorporation of a corporation not having share capital may petition the Lieutenant-Governor through the Provincial Secretary for the grant of letters patent. The petition of the applicants shall show: a) The proposed corporate name of the corporation; b) The objects for which the corporation is to be incorporated; c) The place within Ontario where its objects are to be carried out; d) The name in full, the place of residence, and the calling of each of the applicants; 2. The petition may be in the form or to the effect set out in Schedule C to this Act. 3. The petition shall be accompanied by a memorandum of agreement signed by the petitioners setting out such regulations as may be deemed expedient: 1. For the selection of members, trustees, directors, and officers; 2. For the holding of meetings of members, trustees, and directors; 3. For the establishment of branches; 4. For the payment of directors, trustees, officers, and employees; 5. For the control and management of the affairs of the corporation. The memorandum shall be expressed in separate paragraphs numbered consecutively, and may be in the form or to the effect set out in Schedule D to this Act, and the petitioners may adopt all or any of its provisions or substitute others in lieu thereof.

Imp. § 3.

**Change of name or terms of application.** 6. The Lieutenant-Governor on any application for letters patent or supplementary letters patent may give a different name to the corporation than that proposed, and may vary the objects or other provisions or terms.

Imp. § 8.

**Creation of capital of corporation without share capital.** 7. Any corporation without share capital heretofore or hereafter incorporated upon the consent in writing of all the members of such corporation, may by by-law provide for the creation of a capital divided into shares, and may provide for the allotment and payment of such shares and fix and prescribe the rights and privileges of the shareholders therein: Provided, however, that no such by-law shall be valid until confirmed by letters patent.

**Amalgamation of corporations. Joint agreement between directors proposing to amalgamate, etc. To be submitted to shareholders or members of each corporation.** 8. 1. Any two or more corporations incorporated under the laws of the Province, and having the same or similar objects within the scope of this Act, may, in the manner herein provided, amalgamate, and may enter into all contracts and agreements necessary to such amalgamation. 2. The corporations proposing to amalgamate as aforesaid, may enter into a joint agreement for the amalgamation, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the names, callings, and places of residence of the first directors thereof, and how and when the subsequent directors shall be elected, with such other details as may be necessary to perfect the amalgamation, and the subsequent management and working thereof, and in cases of companies having capital divided into shares, the number of shares of the capital, the amount of par value of each share, and the manner of converting the share capital of each of the said corporations into that of the new corporation. 3. The agreement shall be submitted to the shareholders or members of each of the said corporations at a general meeting thereof, called for the purpose of taking the same into consideration. 4. At such meetings of shareholders or members the agreement shall be considered, and if two-thirds of the votes of all the shareholders or members of each of such corporations are for the adoption of the agreement, then that fact shall be certified upon the agreement by the secretary of each of such corporations under the corporate seal thereof; thereupon the several corporations by their joint petition may, through the Provincial Secretary, apply to the Lieutenant-Governor for letters patent confirming the said agreement, and on and from the date of the said letters patent the said corporations shall be deemed and taken to be amalgamated and to form one corporation by the name in the letters patent provided, and the corporation so incorporated, shall possess all the properties, real, personal, and mixed, rights, privileges, and franchises and be subject to all the liabilities, contracts, disabilities, and duties of each of the corporations so amalgamated.

R. S. O., c. 191, § 103 (1—4). For details in the process of amalgamation, see *Masten, Company Law*, pp. 286, et seq; *Parker and Clark, Company Law*, pp. 311, et seq. See also *Pratt v. Consolidated Electric Co.*, (1894), 34 N. B. 23; *In re Standard Fire Insurance Co.*, *Kelly's Case*, (1885), 12 O. A. R. 486; *Nelles v. Ontario Investment Association*, (1889), 17 O. R. 129. Amalgamation can be legally accomplished only pursuant to this Act. A transfer by one company of its assets to another does not constitute amalgamation, and does not merge the companies into one. — *Maple Leaf Rubber Co. v. Brodie*, (1899), Q. R. 18 S. C. 352. Where the bondholders of a railway company were given, by charter, an option to convert their bonds into preferred stock, and later the company was authorized to amalgamate with another company, it was held that the amalgamation did not extinguish the right of the bondholders to elect to take stock in the new company. — *Cayley v. Cobourg Railway Co.*, (1868), 14 Gr. 571.

**Re-incorporation of corporation.** 9. Any corporation incorporated for purposes or objects within the scope of this Act, whether under a special or general Act, and being at the time of its application a subsisting and valid corporation, may apply for letters patent under this Act; and the Lieutenant-Governor may grant letters patent incorporating the shareholders or members of the said corporation as a corporation under this Act.

R. S. O., c. 191, § 104 (1); Imp. § 249.

**Extension of powers on re-incorporation.** 10. Where an existing corporation applies for the issue of letters patent under the provisions of the preceding section, the Lieutenant-Governor may, by letters patent, extend the powers of the corporation to such other objects as the applicant desires, name the first directors of the new corporation, and give to the new corporation the name of the old corporation or any other name.

R. S. O., c. 191, § 105.

**Rights of creditors preserved.** 11. All rights of creditors against the property, rights, and assets of a corporation amalgamated or re-incorporated under the pro-



visions of this Act, and all liens upon the property, rights, and assets of such corporation, shall be unimpaired by such amalgamation, or re-incorporation, and all debts, contracts, liabilities, and duties of such corporations shall thenceforth attach to the amalgamated or re-incorporated corporation, and may be enforced against it to the same extent as if the said debts, contracts, liabilities, and duties had been incurred or contracted by it.

R. S. O., c. 191, § 103 (6); Imp. § 261.

**No action to abate.** 12. No action or proceeding shall abate or be affected by such amalgamation or re-incorporation, but for all the purposes of such action or proceeding, such corporation may be deemed still to exist, or the new corporation may be substituted in such action or proceeding in the place thereof.

R. S. O., c. 191, § 103 (7); Imp. § 262. Where application was made for an injunction restraining the Attorney-General from recommending to the Lieutenant-Governor that an order in council be passed annulling the charter of the defendants for carrying on an illegal business, it was held that the Court had no jurisdiction, at the suit of a subject, to restrain the Attorney-General from discharging discretionary functions committed to him by the Crown. — *Attorney-General v. Toronto Junction Recreation Club*, (1904), 8 O. L. R. 440; 3 O. W. R. 387; 4 O. W. R. 72.

**Supplementary letters patent for certain purposes; varying capital stock; re-dividing shares; extending powers; limiting borrowing powers; amending charter; making other provisions.** 13. [As amended by 8 Edw. 7, c. 43, § 1 (2).] The directors of any corporation may from time to time pass by-laws authorizing an application, by petition to the Lieutenant-Governor to direct the issue of supplementary letters patent to the corporation embracing any or all of the hereinafter set out matters after such by-law has been confirmed by vote of not less than two-thirds in value of the shareholders or members present in person or by proxy at a general meeting of the corporation duly called for considering the subject of such by-laws: a) Increasing or decreasing the capital; provided, however, that the capital of a company shall not be increased until ninety per centum thereof has been subscribed and ten per centum paid thereon, and further provided, that on a reduction of the capital of a company the liability of shareholders to persons who at the time of such reduction are creditors of the company shall remain as though the reduction had not been made; b) Re-dividing the capital of the company into shares of smaller or larger amount; c) Extending the powers of the corporation to any objects which the corporation may desire; d) Limiting or increasing the amount which the corporation may borrow upon debentures or otherwise; e) Varying any provisions contained in the special Act or letters patent incorporating the corporation; f) Making provision for any other matter or thing in respect of which provision might have been made had the corporation been incorporated under this Act.

R. S. O., c. 191, §§ 17—21, 102, 106; Imp. §§ 7, 9, 40, 41. Subsection (c) "does not empower companies to obtain supplementary letters patent for objects totally different from those set out in the original charter. There must be some degree of similarity in the new objects as compared with the former." — *Warde, Shareholders' and Directors' Manual*, p. 281. Power to cancel must be created by express words. — *Wheeler v. Wilson*, (1884), 6 O. R. 421, at p. 426. In Ontario it was held that such power is impliedly excluded by the provisions of this section, which furnish a method of decreasing the capital stock. — *Livingston v. Temperance, etc., Society*, (1890), 17 O. A. R. 379. A company can not reduce its capital by accepting a surrender of stock. — *Ross v. Dusablon*, (1883), 10 Q. L. R. 74; *Common v. McArthur*, (1898), 29 S. C. R. 239. But a company has power to compromise all claims against it, including claims for cancellation of shares for fraud or misrepresentation. — *Livingston v. Temperance, etc., Society, supra*; *Copp's Case*, (1885), 10 O. R. 497. Where the charter provided that a shareholder might surrender his shares and that his liability in respect thereof should cease, it was held, in a winding-up proceeding, that those who have surrendered shares are not liable as contributories for the unpaid balances on calls. — *In re Ontario Express & Transportation Co.*, (1893), 24 O. R. 216; *Hart v. Ontario Express & Transportation Co.*, *Kirk & Morling's Case*, (1893), 24 O. R. 340. No cancellation can affect a past liability. — *Fuches v. Hamilton Tribune Co.*, (1885), 10 O. R. 497, at p. 503.

**Preliminary conditions to be established.** 14. Before letters patent or supplementary letters patent are issued the applicants shall establish to the satisfaction of the Provincial Secretary the sufficiency of the petition, memorandum of agreement, by-law, resolution, and all documents filed on such application, and shall furnish such evidence of the bona fides of any application as he may deem necessary.

R. S. O., c. 191, § 12.

**Conditions may be imposed in letters patent of incorporation.** 14a. [Added by 9 Edw. 7, c. 66, § 1.] The letters patent may impose any conditions with respect to the by-laws of a corporation or any amendments thereof, and in such event the

corporation shall not carry on its undertaking or any part thereof nor shall the by-laws be of any force or validity until the conditions imposed by the letters patent are complied with.

**Letters patent may provide for audit. 14b.** [Added by 9 Edw. 7, c. 66, § 1.] The letters patent may confer on the Provincial Secretary the right to appoint an auditor to examine the books of the corporation or an inspector to inspect its undertaking and affairs, or to call a general meeting of its members, upon such terms as may be therein set out.

**Return may be required upon any subject. 14c.** [Added by 9 Edw. 7, c. 66, § 1.] If the letters patent so provide, the Provincial Secretary may whenever he sees fit require a society to make a return upon any special subject connected with the affairs of the society, and the society shall make such return within the time mentioned in the notice requiring such return.

**Proofs of matters under this Act. 15.** 1. The Provincial Secretary, or any officer to whom the application may be referred, may, for any purpose under this Act, take evidence in writing, under oath or affirmation. 2. Proof of any matter which may be necessary to be made under this Act, may be made by statutory declaration, affidavit, or deposition before the Provincial Secretary, or officer aforesaid, or before any other person authorized to take affidavits.

R. S. O., c. 191, § 13.

**Notice of issuing letters patent. 16.** Notice of the granting of letters patent or supplementary letters patent, shall be given forthwith by the Provincial Secretary in the *Ontario Gazette*, and the corporation shall be deemed to be existing from the date of the letters patent incorporating the same.

R. S. O., c. 191, § 15; Imp. §§ 9 (6), 42.

**Powers incident to company. 17.** A company having share capital shall possess the following powers as incidental and ancillary to the powers set out in the letters patent or supplementary letters patent: a) To carry on any other business (whether manufacturing or otherwise) which may seem to the company capable of being conveniently carried on in connection with its business or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights; b) To acquire or undertake the whole or any part of the business, property, and liabilities of any person or company carrying on any business which the company is authorized to carry on, or possessed of property suitable for the purposes of the company; c) To apply for, purchase, or otherwise acquire, any patents, licenses, concessions, and the like, conferring any exclusive or non-exclusive, or limited right to use, or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the company, or the acquisition of which may seem calculated directly or indirectly to benefit the company, and to use, exercise, develop, or grant licenses in respect of, or otherwise turn to account the property, rights, or information so acquired; d) To enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession, or otherwise, with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the company is authorized to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the company; and to lend money to, guarantee the contracts of, or otherwise assist any such person or company, and to take or otherwise acquire shares and securities of any such company, and to sell, hold, re-issue, with or without guarantee, or otherwise deal with the same; e) To take, or otherwise acquire and hold, shares in any other company having objects altogether or in part similar to those of the company or carrying on any business capable of being conducted so as directly or indirectly to benefit the company; f) To enter into any arrangements with any authorities, municipal, local, or otherwise, that may seem conducive to the company's objects, or any of them, and to obtain from any such authority any rights, privileges, and concessions which the company may think it desirable to obtain, and to carry out, exercise, and comply with any such arrangements, rights, privileges, and concessions; g) To establish and support or aid in the establishment and support of associations, institutions, funds, trusts, and conveniences calculated to benefit employees or ex-employees of the company (or its predecessors in business) or the dependants or connections, of such persons, and to grant pensions and allowances, and to make payments towards insurance, and to subscribe or guarantee money for charitable or benevolent objects, or for any ex-



hibition or for any public, general, or useful object; h) To promote any company or companies for the purpose of acquiring all or any of the property and liabilities of the company, or for any other purpose which may seem directly or indirectly calculated to benefit the company; i) To purchase, take on lease or in exchange, hire or otherwise acquire, any personal property and any rights or privileges which the company may think necessary or convenient for the purposes of its business and in particular any machinery, plant, stock-in-trade; j) To construct, improve, maintain, work manage, carry out, or control any roads, ways, tramways, branches or sidings, bridges, reservoirs, watercourses, wharves, manufactories, warehouses, electric works, shops, stores, and other works and conveniences which may seem calculated, directly or indirectly, to advance the company's interests, and to contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out, or control thereof; k) To lend money to customers and others having dealings with the company and to guarantee the performance of contracts by any such persons; l) To draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading, warrants, and other negotiable or transferable instruments; m) To sell or dispose of the undertaking of the company or any part thereof for such consideration as the company may think fit, and in particular for shares, debentures, or securities of any other company having objects altogether or in part similar to those of the company; n) To adopt such means of making known the products of the company as may seem expedient, and in particular by advertising in the press, by circulars, by purchase, and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes, rewards, and donations; o) To sell, improve, manage, develop, exchange, lease, dispose of, turn to account, or otherwise deal with all or any part of the property and rights of the company; p) To do all or any of the above things as principals, agents, contractors, trustees, or otherwise, and either alone or in conjunction with others; q) To do all such other things as are incidental or conducive to the attainment of the above objects: Provided, however, that the powers set out in any or all of the foregoing paragraphs may be withheld by the letters patent or supplementary letters patent.

Note that the cases discussed under this section were, for the most part, decided before the enactment of this section, which enumerates the powers incident to companies. Many of the cases, therefore, have been rendered obsolete. The general principle which is to be applied in determining whether or not a given contract is within the powers of a company, is stated as follows by Gwynne, J., in *Hovey v. Whiting*, (1886), 14 S. C. R. 515, at p. 531: "All deeds executed under the corporate seal of an incorporated company are binding on the company, unless it appears by express provision of some statute creating or affecting the company, or by necessary or reasonable inference from the enactment of such statute, that the Legislature meant that such deed should not be executed." Upon the question of the necessity of the corporate seal, see: *National Malleable, etc., Co. v. Smiths Falls*, (1907), 14 O. L. R. 22; *Bernardin v. Municipality of North Dufferin*, (1891), 19 S. C. R. 581, at p. 610; *Garland Manufacturing Co. v. Northumberland Paper Co.*, (1899), 31 O. R. 40. See also other cases discussed by Parker and Clark, *Company Law*, pp. 243, et seq. Where a contract under seal is produced, the seal is presumed to be regularly affixed. — *Woodhill v. Sullivan*, (1864), 14 U. C. C. P. 265; *Fell v. South*, (1864), U. C. Q. B. 196. See also *Sheppard v. Bonanza Nickel Co.*, (1894), 25 O. R. 305; *McKain v. Canadian Birbeck Co.*, (1904), 7 O. L. R. 241. Appointment of managers and other important officials must, in order to be binding, be under seal, and should be made by by-law. — *Birney v. Toronto Milk Co.*, (1902), 1 O. W. R. 736; *Gold Leaf Mining Co. v. Clark*, (1905), 6 O. W. R. 1035. Companies may engage in matters not primarily contemplated by their founders, provided that these matters are incidental to their proper business or bona fide conducive to their prosperous development. — *Ryckman v. Toronto Type Foundry Co.*, (1904), 3 O. W. R. 434. Where one of the objects for which the company is incorporated is to acquire, sell, and dispose of lands, the company has power to give a mortgage on such lands as security for the purchase money. — *Sheppard v. Bonanza Nickel Co.*, (1894), 25 O. R. 305. Since all companies, incorporated under this Act, have power to acquire, hold, and convey real estate requisite for the carrying on of their undertakings, and since the power to acquire and convey land implies the power to mortgage the same, the rule in *Sheppard v. Bonanza Nickel Co.*, *supra*, should apply to all companies incorporated under this Act. See *In re Nash Brick & Pottery Manufacturing Co.*, (1873), 9 N. S. 254, where it was held that the power to borrow implies the power to mortgage. A company may not assign all its rights and powers absolutely. — *Attorney-General v. Niagara Falls, etc., Co.*, (1873), 20 Gr. 34. But a railway company may lease a portion of its road to another company and assign all its rights and privileges as to the portion so leased. — *Michigan Central Railway Co. v. Wealleans*, (1894), 24 S. C. R. 309. But see *Hinckley v. Gildersleeve*, (1872), 19 Gr. 212, where it was held that such a lease is invalid without the sanction of the Legislature; and see *Montreal Telegraph Co. v. Law*, (1883), 27 L. C. J. 257, at p. 277. A company is not bound by an executory contract, unless made in pursuance of its charter or under its corporate seal. — *Garland*

Manufacturing Co. v. Northumberland Paper Co., (1899), 31 O. R. 40. But where the contract has been executed and the company has received the benefits therefrom, it is bound, though the contract was not executed under the corporate seal. — *Bernardin v. Municipality of North Dufferin*, (1891), 19 S. C. R. 581. Where directors bought goods on the credit of the company, which by the act of incorporation, it had no power to purchase, they were held not liable on a warranty of authority. — *Struthers v. Mac Kenzie* (1897), 27 O. R. 381. A parol agreement entered into by "the duly authorized agents" of an insurance company to refer certain claims against the company to arbitration, is *ultra vires*. — *Calvin v. Provincial Insurance Co.*, (1869), 20 U. C. C. P. 267. The assent of every shareholder does not make an *ultra vires* agreement binding. — *Charlebois v. Delap*, (1895), 26 S. C. R. 21. The fact that the contract will be beneficial to the company will not validate it if it is otherwise *ultra vires*. — *National Malleable, etc., Co. v. Smiths Falls*, (1907), 14 O. L. R. 22. A company, empowered to hold land for definite purposes only, may take a conveyance for other purposes, and the Crown alone can take advantage of the disability. — *Becher v. Woods*, (1865), 16 U. C. C. P. 29. So also, if the company has power to hold land for a definite period only, without any provision as to reverter, and holds beyond that period, the Crown alone can take advantage. — *McDiarmid v. Hughes*, (1888), 16 O. R. 570. In actions against the company on contracts entered into with the plaintiffs, the defence of *ultra vires* was not allowed; *Commercial Bank v. Great Western Railway Co.*, (1862), 22 U. C. Q. B. 233, (money advanced by bankers for purposes beyond company's charter); *Western Assurance Co., v. Taylor*, (1862), 9 Gr. 471, (mortgage taken by insurance company to secure purchase money of a vessel sold to mortgagor); *Hope v. Glass*, (1863), 23 U. C. Q. B. 86, (acceptance of a bond as additional security for money overdue upon a mortgage); *Reid v. Whitehead*, (1864), 10 Gr. 446; *Corporation of North Gwiltburg v. Moore*, (transfer of a mortgage held by a company to secure a loan at an illegal rate of interest); *McDonald v. Upper Canada Mining Co.*, (1868), 15 Gr. 179, (agreement by a mining company to make payment for useful information supplied to it); *Hinckley v. Gildersleeve*, (1872), 19 Gr. 212; *Attorney-General v. Niagara Falls, etc., Co.*, (1873), 20 Gr. 31, (lease by a railway company); *In re Nash Brick & Pottery Co.*, (1873), 9 N. S. 254, (mortgage of property by the company to discharge obligations for which shareholders were liable); *Bickford v. Grand Junction Railway*, (1876), 1 S. C. R. 696, (giving of a mortgage for money borrowed); *Canadian Life Assurance Co. v. Peel, etc., Co.*, (1878), 26 Gr. 77, (holding of shares by one trading company in another company); *Macdougall v. Montreal Warehousing Co.*, (1880), 2 L. N. 64, (agreement to pay 7% interest on money borrowed); see also *Royal Canadian Insurance Co. v. Montreal Warehousing Co.*, (1880), 3 L. N. 155; *Sheppard v. Bonanza Nickel Co.*, (1894), 25 O. R. 305, (power to give a purchase money mortgage for land); *Michigan Central Railway Co. v. Wealleans*, (1894), 24 S. C. R. 309, (lease by a railway company); *McCausland v. Hill*, (1896), 23 O. A. R. 738, (covenants by a company in partial restriction of trade); *Farrell v. Carribou Gold Mining Co.*, (1897), 30 N. S. 199, (payment of a bonus upon money borrowed); *Ritchie v. Vermillion Mining Co.*, (1902), 1 O. W. R. 624, (sale by a mining company of all its property); *National Malleable, etc., Co. v. Smiths Falls Co.*, (1907), 14 O. L. R. 22, (contract by a company, the fulfilment of which would require an extension of the company's plant). In the following cases the defence of *ultra vires* was allowed: *Ruitz v. The Roman Catholic, etc., Diocese*, (1870), 30 U. C. Q. B., 269, (loan to church corporation having no power to borrow); *Hearle v. Rhind*, (1878), 22 L. C. J. 239, (issue of warehouse receipts by a company not incorporated as a warehouse company); *Walmsley v. Rent Guarantee Co.*, (1881), (discounting of notes by a company carrying on an agency and commission business); *Victoria, etc., Insurance Co. v. Thompson*, (1882), 32 U. C. C. P. 476; 9 O. A. R. 620, (renewal of promissory notes by an insurance company); *Ross v. Fiset*, (1882), 8 Q. L. R. 251, (company reducing its capital and purchasing its shares without authority); *In re Union Fire Insurance Co., McCord's Case*, (1891), 21 O. R. 264, (transfer of shares to manager in trust for company); *Twigg v. Thunderhill Mining Co.*, (1893), 3 B. C. 101, (shares issued at a discount); *Northwest Electric Co. v. Walsh*, (1898), 29 S. C. R. 33, (shares issued at a discount); *Williams Machinery Co. v. Crawford Tug Co.*, (1908), 16 O. L. R. 245, (guarantee by a company to answer for the debt of an employee); *Lindsay v. Imperial Steel & Wire Co.*, (1910), 15 O. W. R. 105; 16 O. W. R. 406, (allotment of shares to a man of no means). In *Charlebois v. Delap*, (1896), 26 S. C. R. 221, the Court held that if a company enters into a transaction which is *ultra vires* and litigation ensues, in the course of which a judgment is entered by consent, such judgment is as binding upon the parties as one obtained after a contest, and will not be set aside because the transaction was beyond the power of the company. But *cp.* the opinion of Lord Hobhouse in the same case, *sub nom.*, *Great Northwest Central Railway v. Charlebois*, (1899) A. C. 114, wherein he states, p. 124: "It is quite clear that a company can not do what is beyond its legal powers by simply going into court and consenting to a decree which orders that the thing should be done." An outsider is charged with notice of all provisions of the Act under which the company is incorporated, and the contents of the letters patent. Further than this, however, he can not be taken to have notice. — *Royal British Bank v. Turquand*, (1856), 6 E. & B. 327, cited with approval in *McEdwards v. Ogilvie*, (1887), 4 Man. R. 1, at p. 6. See also *Sheppard v. Bonanza Nickel Co.*, (1894), 25 O. R. 305; *McKain v. Canadian Birbeck Co.*, (1904), 7 O. L. R. 241. As to whether third parties are charged with notice of the company's by-laws, see notes to § 41, *infra*.

**Further powers; seal; buildings, etc.; real estate.** 18. Any corporation incorporated under this Act shall have power: a) To alter or change its common seal at



pleasure; b) To construct, maintain and alter any buildings or works necessary or convenient for the purposes of the corporation; c) To acquire by purchase, lease, or other title and to hold, use, sell, alienate, and convey any real estate necessary for the carrying on of its undertaking, and the corporation shall, upon its incorporation, become and be invested with all the property and rights, real and personal, theretofore held by or for it under any trust created with a view to its incorporation.

R. S. O., c. 191, § 25 (a, d, g). Where it appeared that a mining company had not sufficient assets to develop its lands, it was held that the directors had power under this section to sell all the lands of the company, and an injunction to restrain the sale was refused. — *Ritchie v. Vermillion Mining Co.*, (1901), 1 O. L. R. 654; affirmed, s. c. (1902), 4 O. L. R. 588.

**Restrictions to holding real estate. 19.** Unless other special statutory enactments apply, no parcel of land or interest therein at any time acquired by the corporation and not required for its actual use and occupation or not held by way of security, or not situate within the limits or within one mile of the limits of any city or town, shall be held by the corporation or by any trustee on its behalf, for a longer period than seven years after the acquisition thereof, or after it has ceased to be required for the ordinary purposes of the corporation, but shall be absolutely sold and disposed of, so that the corporation shall no longer retain any interest therein unless by way of security; and any such parcel of land or any interest therein not within the exceptions hereinbefore mentioned, held by the corporation for a longer period than seven years, without being disposed of, shall be forfeited to His Majesty for the use of this Province; provided that the Lieutenant-Governor may extend the said period from time to time not exceeding in the whole twelve years; and further provided that no such forfeiture shall take effect or be enforced until the expiration of at least six calendar months after notice in writing to the corporation of the intention of His Majesty to claim such forfeiture, and during such six months the corporation may dispose of the same; and it shall be the duty of the corporation to give the Lieutenant-Governor, when required, a full and correct statement of all lands at the date of such statement held by or in trust for the corporation.

R. S. O., c. 191, § 25. A bona fide agreement to sell land is sufficient to prevent a forfeiture under this section, even though the sale has not been carried out, owing to the default of the purchaser. — *London & Canadian Loan Co. v. Graham*, (1888), 16 O. R. 329. A conveyance of land to a corporation not empowered to hold lands is voidable only and not void, and the lands can be forfeited by the Crown alone. — *McDiarmid v. Hughes*, (1888), 16 O. R. 570.

**Certain informalities not to invalidate letters patent, etc. 20.** The provisions of this Act relating to matters preliminary to the issue of the letters patent or supplementary letters patent shall be deemed to be directory only; and no letters patent or supplementary letters patent, notice, order, or other proceedings by or on behalf of the Lieutenant-Governor, Provincial Secretary, or other Government or Departmental officer under this Act shall be held to be void or voidable on account of any irregularity, or otherwise in respect of any matter preliminary to the issue of the letters patent or supplementary letters patent, notice, order, or other proceeding, or of any alterations in any petition or documents submitted in order to make them comply with this Act or with the departmental practice thereunder.

R. S. O., c. 191, § 96.

**Forfeiture of charter for non-user. 21.** If a corporation incorporated by letters patent does not go into actual operation within two years after incorporation or for two consecutive years does not use its corporate powers, such powers, except so far as is necessary for the winding-up of the corporation, shall be forfeited, and its name in the whole or in part may be granted to another corporation, and in any action or proceeding where such non-user is alleged, proof of user shall lie upon the corporation, provided, however, that no such forfeiture shall affect prejudicially the rights of creditors as they exist at the date of such forfeiture.

R. S. O., c. 191, § 98; Imp. § 242.

**Revocation of charter. 22.** The letters patent by which a corporation is incorporated and any supplementary letters patent amending or varying the same, may, at any time, be declared to be forfeited and may be revoked and made void by an Order of the Lieutenant-Governor on sufficient cause being shown in that behalf, and such forfeiture, revocation, and making void may be upon such conditions and subject to such provisions as to the Lieutenant-Governor may seem proper.

R. S. O., c. 191, § 99. Under this provision, the charter of the "Bertie Pastime Club" was revoked on the ground that it had been obtained for the purpose of operating a pool-room. — Order in Council, 15th February, 1904. The charter of the "Toronto Junction Recreation Club"

was likewise revoked on the ground that the club was organized for unlawful purposes. — Order in Council. 14th February, 1904, cited by Warde, *Shareholders' and Directors' Manual*, p. 254. "It may be regarded as an accepted principle that the question whether a corporation has forfeited its franchise and ceased to exist, can not, in general, be raised in a collateral proceeding, but can only be raised by the State." — Masten, *Company Law*, p. 270. But it has been held, in Quebec, that if a company has become completely disorganized and has neither president nor directors, this fact may be alleged by way of defence. — *La Compagnie du Cap Gibraltar v. Lalonde*, (1889), M. L. R. 5 S. C. 127; *Misawippi Valley Railway Co. v. Walker*, (1871), 3 Rev. Leg. 450. And it has also been held, in Quebec, that where a company had forfeited its charter, a defendant may have an action brought against him by the company stayed until proceedings can be taken to have the charter annulled. — *Windsor Hotel v. Murry*, (1878), 1 L. N. 75; see also *Quebec, etc., Railway Co. v. Dawson* (1851), 1 L. C. R. 356. Where the act of incorporation of a Dominion company provided that operations might be commenced when \$ 100 000 of the capital stock was subscribed, it was held that the bona fide subscription of this amount was a condition precedent to the legal organization of the company, and the company having commenced operations when only \$ 60 500 was subscribed, the charter was forfeited at the suit of the Attorney-General. — *Dominion Salvage & Wreckage Co. v. Attorney-General*, (1892), 21 S. C. R. 72. But non-compliance with such a condition, does not, ipso facto, extinguish the company, nor revoke its charter. Forfeiture can only be procured by a suit at the instance of the Attorney-General. — *Roy v. La Compagnie du Chemin de Fer Quebec, etc.*, (1888), 14 Q. L. R. 255; see also *Attorney-General v. Bergen*, (1896), 29 N. S. 135. So also, where an Act provided that if a certain company did not complete its work within a specified time, it should forfeit its charter, it was held that non-compliance with such a condition subsequent, would not, ipso facto, forfeit the charter, but would only afford grounds for an action by the Attorney-General to have a forfeiture declared. — *Hardy v. Pickeral River Co.*, (1898), 29 S. C. R. 211. For details of procedure to procure a forfeiture, see Masten, *Company Law*, p. 273.

**Company with less than five members. 23.** If a corporation exercises its corporate powers when the number of its shareholders or members is less than five, for a period of six months after the number has been so reduced, every person who is a shareholder or member of the corporation during the time that it so exercised its corporate powers after such period of six months and is cognizant of the fact that it is so exercising its corporate powers with less than five shareholders or members shall be severally liable for the payment of the whole of the debts of the corporation contracted during such time, and may be sued for the same without the joinder in the action or suit of the corporation or of any other shareholder or member, but any shareholder or member who has become aware that the corporation is exercising its corporate powers when the number of its shareholders or members is less than five, may serve a protest in writing on the corporation and may by registered letter notify the Provincial Secretary of such protest having been served and of the facts upon which it is based, and such shareholder or member may thereby and not otherwise from the date of his said protest and notification exonerate himself from liability, and if after notice from the Provincial Secretary, the corporation refuses or neglects to bring the number of its shareholders or members up to five, such refusal or neglect may, upon the report of the Provincial Secretary, be regarded by the Lieutenant-Governor as sufficient cause for the revocation of the charter of the corporation. R. S. O., c. 191, § 100; Imp. § 115.

**Surrender of charter. 24.** The charter of a corporation incorporated by letters patent may be surrendered if the corporation proves to the satisfaction of the Lieutenant-Governor: a) That it has no debts existing or other rights in question, or, b) That it has parted with its property, divided its assets rateably amongst its shareholders or members and has no debts or liabilities; or, c) That the debts and obligations of the corporation have been duly provided for or protected or that the creditors of the corporation or other persons holding them consent; d) And that the corporation has given notice of the application for leave to surrender by publishing the same once in the *Ontario Gazette* and once in a newspaper published at or as near as may be the place where the corporation has its head office, or if it be without share capital where its operations are carried on; and the Lieutenant-Governor upon a due compliance with the provisions of this section, may accept the charter and direct its cancellation, and may, by his order, fix a date upon and from which the corporation shall be deemed to be dissolved, and the corporation shall thereby and thereupon become dissolved accordingly.

R. S. O., c. 191, § 101. The application must be by a formal petition. For the form of the petition and procedure, see Warde, *Shareholders' and Directors' Manual*, pp. 292 and 504.

**End of existence of corporations. 25.** The corporate existence of a corporation incorporated otherwise than by letters patent may be terminated by order of the



Lieutenant-Governor upon petition therefor by such corporation under like circumstances, in like manner and with like effect as a corporation incorporated by letters patent may surrender its charter.

26. The Lieutenant-Governor in Council may, from time to time, make regulations with respect to the following matters, namely: a) The cases in which notice of application for letters patent or supplementary letters patent under this Act must be given; b) The forms of letters patent, supplementary letters patent, notices, and other instruments and documents relating to applications and other proceedings under this Act; c) The form and manner of the giving of any notice required by this Act; and such regulations shall be published in the *Ontario Gazette*.

R. S. O., c. 191, § 11.

## *Part II. Name of Corporation.*

**Use of word "Limited". Penalty. Proviso. Limitation of prosecutions.** 27. 1. The corporate name of every company with share capital shall have the word "Limited" as the last word thereof. 2. Wherever the company or any director, manager, officer, or employee thereof uses the name of the company, the word "Limited" shall appear as the last word thereof: Provided, that stamping, writing, printing, or otherwise marking on goods, wares, and merchandise of the company, or upon packages containing the same shall not be deemed to be within the provisions of this section: Provided also that where the word "company," "club," "association," or other equivalent word forms part of the said name the word "Limited" may be abbreviated to "Ltd.," or "Ld." 3. Every company and every director, manager, officer, or other employee making default in complying with the foregoing provisions of this section shall be liable upon summary conviction to a penalty not exceeding ten dollars for each and every offence: Provided, that the offender upon a subsequent conviction for a similar offence committed after such first conviction shall be liable upon summary conviction to a penalty not exceeding one hundred dollars. 4. The prosecution or proceeding to recover a penalty for an offence against the foregoing provisions of this section shall be commenced within six months after the offence has been committed and not afterwards.

63 Vic., c. 23, § 3; Imp. §§ 3, 4, 20. In *Howell Lithographic Co. v. Brethour*, (1899), 30 O. R. 204, it was held that under 61 Vic. c. 19, § 4, that the use of the abbreviation "Ltd.," was not a compliance with the requirements of the Act.

**Name to be free from objection.** 28. The name of every corporation shall not on any public ground be objectionable and shall not be that of any known corporation or association incorporated or unincorporated, or of any partnership or of any individual or any name under which any known business is being carried on, or so nearly resembling the same as to deceive; provided, however, that a subsisting corporation, association, partnership, individual, or person may consent that its or his name, in whole or in part, be granted to a new corporation incorporated for the purpose, of acquiring its or his business or promoting its objects.

R. S. O., c. 191, § 10; Imp. § 8. See notes § 4, *supra*.

**Failure to make annual returns.** 29. The name of a corporation which has not, for three consecutive years, made the annual summary prescribed by this Act, may be given in whole or in part to a new corporation, unless the defaulting corporation, on notice by the Provincial Secretary by registered letter addressed to the corporation or its president as shown by its last return, proves to the satisfaction of the Lieutenant-Governor that it is still a subsisting corporation; provided, that if at the end of one month from the date of such notice, the Provincial Secretary shall not have received from the corporation or its president response to such notice, the corporation may be deemed to be not a subsisting corporation, and no longer entitled to the sole use of its corporate name; and further provided, that when no annual summary has been filed by a corporation for three years immediately following its incorporation its name may be given to another corporation, without notice, and such corporation shall be deemed not to be subsisting.

1 Edw. 7, c. 18, § 3; Imp. § 8 (1).

**Change of name if objectionable.** 30. In case it is made to appear to the satisfaction of the Lieutenant-Governor that any corporation is incorporated under a name the same as, or so similar to that of an existing corporation, company, partnership, association, individual, or business as to deceive, the Lieutenant-Governor may by order change the name of the corporation.

R. S. O., c. 191; § 24, Imp. § 8.

**Applications to Lieutenant-Governor to change names of companies. In case proposed name is objectionable. 31.** 1. Where a corporation is desirous of changing its name, the Lieutenant-Governor, upon being satisfied that the corporation is in a solvent condition, and that the change desired is not for any improper purpose, and is not otherwise objectionable, may by order change the name of the corporation. 2. In case the proposed name is considered objectionable, the Lieutenant-Governor may change the name of the corporation to some unobjectionable name.

R. S. O., c. 215, §§ 1, 3; Imp. § 8 (3).

**Notice of change. 32.** Notice of the change of the name of a corporation shall be given by the Provincial Secretary by publication in the *Ontario Gazette*.

Imp. § 8.

**Rights of creditors preserved. 33.** No such alteration of name of a corporation shall affect the rights or obligations of the corporation; and all proceedings that might have been continued or commenced by or against the corporation by its former name may be continued or commenced by or against the corporation by its new name.

Imp. § 8 (5).

### *Part III. Meetings of Company.*

**First meeting. Report at first meeting. Shareholders may call. 34.** 1. The provisional directors of a company not offering shares for public subscription, shall call a general meeting of the company to be held at a convenient place within two months from the date of the letters patent for the purpose of electing directors, appointing auditors, sanctioning the by-laws of the company, and transacting such other business as may be necessary to enable the company to carry on its undertaking, and shall, at least ten days before the day on which such meeting is held, give notice of such meeting by registered letter addressed to each shareholder, setting out in detail the business to be transacted and matters to be considered thereat. 2. The provisional directors shall report to such meeting: the number of shares subscribed or underwritten; the names of the subscribers or underwriters; the amount paid thereon; all contracts entered into by or on behalf of the company; the amount of the preliminary expenses and a financial statement of the affairs of the company signed by the auditors (if any). 3. If the said meeting is not called by the provisional directors as aforesaid, any three or more shareholders of the company may call the meeting.

R. S. O., c. 191, § 16; Imp. § 65.

**Notice of meeting. 35.** In default of other express provisions in such behalf in the special Act, the letters patent, or by-laws of the company, notice of the time and place for holding general meetings of the company, including the annual and special meetings shall be given at least ten days previously thereto by registered letter to each shareholder at his last known address, and by an advertisement in some newspaper published at or as near as may be to the head office and to the chief place of business of the company, if these differ, or in the *Ontario Gazette*.

R. S. O., c. 191, § 50; Imp. § 67. The fact that a shareholder attended and took part in a meeting called illegally, does not prevent his afterwards filing a bill impeaching the proceedings as irregular and invalid. — *Marsh v. Huron College*, (1880), 27 Gr. 605; *Cannon v. Toronto Corn Exchange*, (1880), 5 O. A. R. 268. But see *Christopher v. Noxon*, (1884), 4 O. R. 672, at p. 680, where an estoppel was raised against the plaintiff.

**Annual meeting. 36.** 1. The annual meeting of the shareholders of the company shall be held at such time and place in each year as the special Act, letters patent, or by-laws of the company may provide, and in default of such provisions in that behalf the annual meeting shall be held at the place named in the letters patent as the place of the head office of the company, on the fourth Wednesday in January in every year. 2. At such meeting the directors shall lay before the company: a) A balance sheet made up to a date not more than three months before such annual meeting; b) A statement of income and expenditure for the financial period ending upon the date of such balance sheet; c) The report of the auditor or auditors; d) Such further information respecting the company's financial position as the letters patent or the by-laws of the company may require; and, on resolution affirmed by shareholders holding at least five per centum of the capital of the company, shall furnish a copy thereof to every shareholder, personally present at such meeting and demanding the same. 3. [As amended by 8 Edw. 7, c. 43, § 1 (3).] Every balance sheet shall be drawn up so as to distinguish at least the following classes of assets and liabilities,



namely: a) Cash; b) Debts owing to the company from its customers; c) Debts owing to the company from its directors, officers, and shareholders; d) Stock in trade; e) Expenditures made on account of future business; f) Land, buildings, and plant; g) Goodwill, franchises, patents, and copyrights, trademarks, leases, contracts, and licenses; h) Debts owing by the company secured by mortgage or other lien upon the property of the company; i) Debts owing by the company but not secured; k) Amount received on common shares; l) Amount received on preferred shares; m) Indirect and contingent liabilities.

Imp. § 64.

**Special meetings. 37.** The directors may and upon a requisition made in writing by the holders of not less than one-tenth of the subscribed shares of the company shall, convene a special general meeting of the company, to transact the business set out in the notice calling such meeting.

R. S. O., c. 191, § 52; Imp. § 66. A notice calling a special or extraordinary meeting must state particularly the objects of the meeting, and no business can be transacted at the meeting, except in relation to the matter specified, unless the whole of the board is present and unanimously consent. — *Waddell v. Ontario Cannery Co.*, (1889), 18 O. R. 41, at p. 51.

**Directors to call meeting. 38.** Upon the receipt of such requisition, which shall set out the objects for which such meeting is proposed to be called, and shall be left at the head office of the company, the directors shall forthwith proceed to convene a special general meeting. If they do not cause the same to be held within twenty-one days from the date upon which the requisition was left at the head office of the company, any shareholders, holding not less than one-tenth in value of the subscribed shares of the company, whether they signed the requisition or not, may themselves convene such special general meeting.

R. S. O. 1897, c. 191, §§ 53, 54. R. S. O., (1897), c. 191, §§ 56 and 57, providing for a quorum have been omitted in this Act. "It is questionable whether such is necessary. If all shareholders have notice, as is provided, the business of the company should go on." — *Warde, Shareholders' and Directors' Manual*, p. 300.

**Presiding officer. Chairman to be elected when necessary. 39.** The president of the company shall preside as chairman at every general meeting of the company; if there is no president or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the shareholders present shall choose some one of their number to be chairman.

R. S. O., c. 191, §§ 58, 59; Imp. § 67.

**Adjournment by consent. 40.** The chairman may with the consent of the meeting, and subject to such conditions as the meeting may decide, adjourn any meeting from time to time and from place to place.

R. S. O., c. 191, § 60. In *Laren v. Fiske*, (1881), 28 Gr. 352, the Court held that, upon the facts, the first meeting was a nullity, and consequently the adjournment to the second meeting was also a nullity, and notice of the new meeting was as much a necessity as if there had been no adjournment of the first meeting.

**Procedure as to resolution. 41.** At any general meeting, unless a poll is demanded, a declaration by the chairman that a resolution has been carried and an entry to that effect in the proceedings of the company, shall be prima facie evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

R. S. O., c. 191, § 61; Imp. § 69 (3).

**Taking vote when poll is demanded. 42.** If a poll is demanded, it shall be taken in such manner as the by-laws prescribe, and in case the by-laws make no provision therefor, then as the chairman may direct. In the case of an equality of votes, at any general meeting, the chairman shall be entitled to a second or casting vote.

R. S. O., c. 191, § 62; Imp. § 69 (4). The motive of a shareholder in casting his vote will not be inquired into even though such shareholder has a personal interest, and the result of his vote will be detrimental to the company. — *Northwest Transportation Co. v. Beatty*, (1887), 12 A. C. 589, at p. 593. But this rule is limited to the case of a shareholder, and does not extend to permitting a director to vote upon questions in which he has a personal interest. — *Ibid*; see also *Burland v. Earle*, (1902) A. C. 83. Neither will the fact that shares have been purchased for the purpose of influencing the election of officers, warrant the interference of the Court, provided no fraud is shown. — *Toronto Brewing & Malting Co. v. Blake*, (1882), 2 O. R. 175; *Christopher v. Noxon*, (1883), 4 O. R. 672. The Court has jurisdiction to set aside an election on the grounds that the voters were merely nominal holders, and not bona fide subscribers. — *Davidson v. Grange*, (1854), 4 Gr. 377. This right to the interference of the Court may, however, be lost by acquiescence, and it was held in *In re Moore v. Port Bruce Harbor Co.*, (1857), 14 U. C. Q. B. 365,

that a delay of eight months was a bar to an order setting aside the election. See also *Beaudry v. Read*, (1907), 10 O. W. R. 622, and cases cited in note to *Dominion Companies Act* § 77, *supra*.

**Votes. Shareholders in arrear not to vote.** 43. Subject to the Special Act, letters patent, or by-laws of the company, at all general meetings of the company every shareholder shall be entitled to as many votes as he holds shares in the company, and may vote by proxy, but no shareholder being in arrear in respect of any call shall be entitled to vote at any meeting of the company.

R. S. O., c. 191, §§ 63, 64; Imp. § 67. A proxy given by the transferor, where the shares have not been registered in the name of the transferee, is sufficient to authorize the proxy holder to vote. — *Stevenson v. Vokes*, (1896), 27 O. R. 696. The improper rejection of proxies is good ground for setting aside an election of directors. — *Kelly v. Electrical Construction Co.*, (1907), 10 O. W. R. 704.

**Place of meetings.** 44. [As amended by 8 Edw. 7, c. 43, § 1 (4).] All meetings of the shareholders shall be held at the place of the head office of the company, save and except when the company is authorized by the Special Acts, letters patent, or supplementary letters patent, to hold meetings of shareholders or directors out of Ontario.

**Application of part.** 45. This part of the Act shall apply only to companies having share capital.

#### *Part IV. Shares, Calls.*

**Share certificate.** 46. Every shareholder shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of the several joint holders shall be sufficient delivery to all.

Imp. § 92.

**Lost certificate.** 47. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding twenty-five cents, and on such terms, if any, as to evidence and indemnity, as the directors think fit.

**Shares personal estate.** 48. [As amended by 8 Edw. 7, c. 48, § 2, and 10 Edw. 7, c. 80, § 2.] 1. The shares of the company shall be deemed personal estate and shall be transferable on the books of the company, in such manner and subject to such conditions and restrictions as by this Act, the Special Act, the letters patent, or by-laws of the company may be prescribed. 2. Should shares in the capital stock of the company be issued in pounds sterling or francs, then shares previously issued in Canadian currency may at the option of the holder be exchanged for shares in pounds sterling or francs, as the case may be. For the purpose of dividends, distribution of assets, voting and all other matters relating to the amount of shares issued in pounds sterling or francs, one pound sterling or twentyfive francs shall be calculated as five dollars. Shares herein shall include share warrants, where the company is authorized to issue the same.

R. S. O., (2) c. 191, § 27; Imp. § 22 (1). See notes, § 52, *infra*. One who purchases shares in good faith without notice of a defect in the title of his transferor, is entitled to a mandamus ordering a transfer of stock on the books of the company. — *In re Dominion Oil Co.*, (1903), 2 O. W. R. 826. A purchaser of stock is not charged with notice of special restrictions on the transfer of stock contained in the company's by-laws. So, a provision in a certificate that "the articles of this company are a part and parcel of this contract," is not sufficient to make applicable to a purchaser in good faith of the share, a by-law of the company purporting to give to the company a lien on all shares for "any and all amounts that may be owing by the shareholder or his assigns to the company." — *In re McKain, etc., Savings Co.*, (1904), 7 O. L. R. 341; *Banard v. Duplessis Independent Shoe Co.*, (1908), Q. R. 31 S. C. 362. Where the transferor had received from the company no certificate of shares, it was held that the presentation to the company, by the transferee, of an assignment made to him, was sufficient to entitle him to possession of the unissued certificate and to a transfer of the stock in his own name. — *Meyers v. Lucknow Electric Co.* (1905), 6 O. W. R. 291. Where a company has issued a share certificate to the transferor it is estopped as against the transferee from denying that the transferor is the regular shareholder and entitled to the shares specified in the certificate. — *McCracken v. McIntyre*, (1877), 1 S. C. R. 479.

**Shares in cold storage companies.** 49. No shareholder of a co-operative cold storage company or association to which aid has been or may hereafter be granted under the provisions of any statute in that behalf, or of a cheese and butter manufacturing company carried on for co-operative purposes, shall hold shares exceeding \$ 1000.

63 Vic. c. 26, § 4.



**Directors may refuse transfer of shares in certain cases. Their liability if they allow transfers to persons without means.** 50. The directors may refuse to allow the entry in any such books, of any transfer of shares whereof the whole amount has not been paid in; and whenever entry is made in such book of any transfer of shares not fully paid in, to a person being of apparently not sufficient means, the directors present when such entry is authorized shall be jointly and severally liable to the creditors of the company in the same manner and to the same extent as the transferring shareholder, but for such entry, would have been; but if any director present, when such entry is allowed, forthwith enters a written protest against the same, and within eight days thereafter causes such protest to be notified, by registered letter, to the Provincial Secretary, such director may thereby, and not otherwise, exonerate himself from such liability.

R. S. O., c. 191, § 28. See notes to § 52, *infra*. In *In re Imperial Starch Co.*, (1905), 10 O. L. R. 22; 5 O. W. R. 591, it was held that, while directors may refuse to transfer shares whereof the whole amount has not been paid in, this power does not extend to fully paid up shares, and a mandamus compelling the transfer of shares was granted. See also *In re Pantou & Cramp Steel Co.*, (1904), 9 O. L. R. 3; *In re Shanz*, (1910), 15 O. W. R. 534; 16 O. W. R. 30. But see *Nelles v. Windsor, etc., Railway Co.*, (1908), 16 O. L. R. 359, where a mandamus to compel transfer of shares was refused. Directors have a discretionary power as to registering transfers of shares not fully paid up. — *In re McDonald v. Mail Printing Co.*, (1876), 6 O. P. R. 309. In the absence of evidence to the contrary, it will be presumed that they exercised this discretion reasonably and bona fide. — *In re McDonald, etc.*, *supra*; see also *In re Smith v. Canada Car Co.*, (1876), 16 O. P. R. 107. For a case where it was held that such discretion was not reasonably exercised, see *Smith v. Bank of Nova Scotia*, (1882), 8 S. C. R. 558. The insolvency of an assignee of shares has been held to be of itself no objection to the transfer, the only condition for a valid transfer being the payment of all calls. — *Moore v. McLaren*, (1862), 11 U. C. C. P. 534; *In re Provincial Building Society*, (1891), 20 N. B. 628. If there is no objection to the transfer, the company must register it within a reasonable time. — *Nelles v. Windsor Railway Co.* (1908), 11 O. W. R. 463. As to what will constitute a sufficient registration of the transferee on the books of the company, see *Hudson's Case*, (1905), 6 O. W. R. 514. A mandamus will lie to compel the company to make the transfer on its books. — *Smith v. Canada Car Co.*, (1873), 6 O. P. R. 107; *McDonald v. Mail Printing Co.*, (1876), 6 O. P. R. 309; *Goodwin v. Ottawa Railway Co.*, (1862), 22 U. C. Q. B. 186; *Guillot v. Sandwich Road Co.*, (1867), 26 U. C. Q. B. 246; *Crawford v. Provincial Insurance Co.*, (1859), 8 U. C. C. P. 263; *Cunningham v. Beaudet*, (1878), 11 Q. L. R. 168; *Brady v. Stewart*, (1887), 15 S. C. R. 82. But in order to entitle the applicant to such relief, he must show a demand and a refusal to register him. As to what will constitute a sufficient demand and refusal, see *In re Goodwin and Ottawa Railway Co.*, (1863), 13 U. C. C. P. 254; *In re Guillot v. Sandwich, etc., Railway Co.*, (1867), 26 U. C. Q. B. 246; *Boulton v. Hugel*, (1874), 35 U. C. Q. B. 402. Damages may also be awarded against the company for refusal to transfer. — *McMurrich v. Bond Head Harbour Co.*, (1852), 9 U. C. Q. B. 333. It was also held in the above case that, in the absence of statute, the company was not justified in refusing to register a transfer of shares where the shareholder was indebted to the company, since there was no common law lien on shares. In *Provincial Insurance Co. v. Shaw*, (1860), 19 U. C. Q. B. 533, a person who had paid one call after a transfer by him had been registered by the company, was not estopped from proving the assignment in an action for subsequent calls. So, a person who has taken a transfer, absolute in form, is not estopped from proving that the assignment was by way of mortgage. — *Page v. Austin*, (1882), 7 O. A. R. 1; affirmed, s. c. (1884), 10 S. C. R. 132. A company is estopped, as against bona fide transferees, from denying that the transferor, to whom a share certificate has been granted, is a registered shareholder. — *McCracken v. McIntyre*, (1877), 1 S. C. R. 479. For the liability of a contributory in a winding-up proceeding for unpaid calls on shares, see *Dominion Winding-up Act*, notes § 51, *supra*. See § 116, *infra*, for summary powers of judges to rectify errors and supply omissions of entries in the company's books.

**Payment of dividends.** 51. The directors, upon the passing of a by-law authorizing the payment of a dividend upon shares of the company, may direct that no entry of transfers shall be made in the books of the company for a period of two weeks immediately preceding the payment of such dividend and payment thereof shall be made to the shareholders of record on the date of closing said books.

**Transfer valid only after entry.** 52. No transfer of shares unless made by sale under execution, or under the order or judgment of some competent court in that behalf, shall, until entry thereof has been duly made, be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto toward each other, and as rendering the transferee liable, ad interim, jointly and severally with the transferor, to the company and its creditors, until entry thereof has been duly made in the books of the company.

R. S. O., c. 191, § 29. A bona fide assignment or pledge for value of shares, is valid as between the assignor and assignee, notwithstanding that no entry of the transfer has been made on the books of the company. — *Morton v. Cowan*, (1894), 25 O. R. 529. But, except as between

assignor and assignee, registration is necessary to acquire a valid title to stock transferred. Thus, in *Smith v. Walkerville, etc., Co.*, (1896), 23 O. A. R. 95, where stock of a company was assigned for value and the transferee gave no notice to the company of the assignment and did not apply to be registered as a shareholder until after the original shareholder had executed another transfer to another innocent purchaser for value, which latter transfer was registered by the company, it was held, under this section, that the second transferee acquired a legal title to the shares, and that the first transferee had no action against the company for allowing the transfer. In Ontario, it is held that an unregistered transfer of shares is good as against a subsequent attaching creditor of the transferor. — *Morton v. Cowan*, (1894), 25 O. R. 528; but see *Brock v. Ruttan*, (1851), 1 U. C. C. P. 218. Shares of stock are choses in action and, at common law, can be transferred by word of mouth. — *Kiely v. Smyth*, (1879), 27 Gr. 220; *Long v. Long*, (1870), 17 Gr. 251. In the absence of provisions regulating the mode of acceptance of shares, an actual acceptance by the transferee, followed by a record of the assignment on the books of the company, is sufficient to constitute the transferee a shareholder, without a written acceptance. — *Ross v. Machar*, (1885), 8 O. R. 417. While shares may be made to pass by delivery, it is settled that they are not negotiable, and a transferee takes them subject to all equities. — *Smith v. Walkerville, etc., Co.*, *supra*. So, if a certificate is lost or stolen from the owner, without fault on his part, he may recover the same even from a purchaser for value from any intermediate holder. — *Smith v. Rogers*, (1899), 30 O. R. 256. But where the registered owner of shares gave to her broker, for the purpose of sale, a certificate endorsed in blank, it was held that a bank, with which the broker had improperly deposited the certificate as security for advances, acquired a good title to the shares as against the owner. — *Ibid*. A transferor of shares is not exempted from liability as a contributory, unless the deed purporting to transfer the shares is completed in accordance with the rules of the society. — In *re St. John Building Society*, (1889), 28 N. B. 597. As to the effect of irregular transfers see *Hamilton v. Grant*, (1900), 30 S. C. R. 566; *Brock v. Ruttan*, (1851), 1 U. C. C. P. 218; *Crawford v. Provincial Insurance Co.*, (1857), 8 U. C. C. P. 263; In *re McKain and Canadian, etc., Investing Co.*, (1904), 7 O. L. R. 241. As to transfers to a "man of straw," see In *re Peterboro Cold Storage Co.*, (1907), 9 O. W. R. 850. A transfer of shares to the manager of a company to hold in trust for the company, such shares being partly paid up, is invalid, since the company has no power to deal in its own stock. — In *re Union Fire Insurance Co.*, *McCord's Case*, (1891), 21 O. R. 264; see also *Paton's Case*, (1902), 5 O. L. R. 392, where a defendant, at the request of the president of a company, accepted a transfer of shares partly paid up to enable him to vote, but where no re-transfer was ever made, he was held liable as a contributory. — *Ontario Investment Corporation v. Leys*, (1893), 23 O. R. 496; see also *Kiely v. Smyth* (1879) 27 Gr. 220. Long delay on the part of the company in registering a transfer does not release a transferee from his liability as a contributory where the transfer is registered before the winding-up proceeding is commenced. — In *re Cole and Canada, etc., Insurance Co.*, *Close's Case*, (1885), 8 O. R. 92. For further cases on the liability of contributories, see *Dominion Winding-up Act*, § 51, notes, *supra*.

**Transferor may be notified.** 53. 1. The directors may for the purpose of notifying the person or persons registered therein as owners of such shares, refuse to allow the entry in any such books of a transfer of shares. 2. Such owner may lodge a caveat against the entry of such transfer, and thereupon such transfer shall not be made for a period of forty-eight hours. 3. If within one week from the giving of such notice or the expiration of the said period of forty-eight hours, whichever shall last expire, no order shall have been served upon the company enjoining the entry of such transfer, the company may enter the same. 4. When a transfer is entered after the proceedings heretofore set out the company shall be free from liability in respect of shares so transferred to a person whose rights are purported to be transferred, but without prejudice to any claim which the transferor may have against the transferee.

**Restrictions as to transfers.** 54. No shares shall be transferable until all previous calls have been fully paid in, or until declared forfeited for non-payment of calls.

R. S. O., c. 191, § 30. Under the *Dominion Companies Act*, § 67, *supra*, the directors may decline to register a transfer where the transferor is indebted to the company. The *Ontario Act* merely restricts transfers until all calls have been paid, and makes no provision for a lien for a general indebtedness to the company. — See *McMurrich v. Bondhead Harbour Co.*, (1852), 9 U. C. Q. B. 333, where it was held that there was no common law lien, and that the company was not justified in refusing to register a transfer when the shareholder was indebted to it. Where directors subscribed for stock making no provision for payment and making no calls thereon, and afterwards, but some time before the company was declared insolvent, transferred their stock to bona fide purchasers for value, upon the representation that the latter would incur no liability thereon, it was held that the transfers were invalid, as being made before all calls had been paid, contrary to the provisions of this section, and that the directors were liable as contributories in the winding up. — In *re Peterborough Cold Storage Co.*, (1907), 14 O. L. R. 475.



**Calling in instalments. 55.** The directors of the company may call in and demand from the shareholders thereof, the amount unpaid on shares by them subscribed or held, at such times and places and in such payments or instalments as the letters patent or this Act, or the by-laws of the company require or allow; and interest shall accrue at the legal rate for the time being upon the amount of any unpaid call, from the day appointed for payment of such call.

R. S. O., c. 191, § 32. See notes §§ 50 and 54, *supra*. Power to make calls can not be delegated. — Provident Life Assurance Co. v. Wilson, (1866), 25 U. C. Q. B. 53. Where the letters patent or by-laws of the company provide that a certain notice of calls shall be given, such requirement must be strictly complied with and the full time must be given or the call will be invalid. — St. John Bridge Co. v. Woodward, (1840), 3 N. B. 29; Union Fire Insurance v. O'Gara, (1883), 4 O. R. 359; National Insurance Co. v. Egleson, (1881), 29 Gr. 406. But it is not necessary that calls should be made by by-laws; a resolution is sufficient. — Provident Life Assurance Co. v. Wilson, *supra*. The resolution need not name the time and place of payment. It will be sufficient if this is stated in the notice. — Union Fire Insurance v. O'Gara, *supra*. But in view of the wording of § 55, it would appear advisable that if the general by-laws of the company do not contain clauses respecting the time and place of calls to be made, a by-law rather than a resolution should be passed making the same. — Parker and Clark, *Company Law*, p. 334. A notice of a call, which requires payment on different days from those provided for in the resolution of the directors, is invalid. — London Gas Co. v. Campbell, (1856), 14 U. C. Q. B. 143; see also Provincial Insurance Co. v. Worts, (1883), 9 O. A. R. 56. But where a shareholder has made a payment upon a call which is invalid, owing to such a variation, he can not thereafter raise the question of the invalidity of such call. — Provincial Insurance Co. v. Cameron, (1880), 31 U. C. C. P. 523. Notice of call is duly given at the time of mailing. — Union Fire Insurance Co. v. Fitzsimmons, (1882), 32 U. C. C. P. 602; Union Fire Insurance Co. v. Schoolbred, (1883), 4 O. R. 359. But where the charter provided that notice "shall be given," it was held that proof of mailing was insufficient. — Ross v. Machar, (1885), 8 O. R. 417; see also Buffalo, etc., Railway Co. v. Clarke, (1855), 12 U. C. Q. B. 607. Where shares are held by a firm, notice of a call may be sufficiently given by mailing the notice to one of the partners, and this, even after dissolution, as to matters "which are thereafter to be completed." — National Insurance Co. v. Egleson, (1881), 29 Gr. 406; and *semble*, notice to one of two joint proprietors of stock would be imputed to the other. — *Ibid*. A call which appointed no place of payment, was held a nullity. — Provident Life Assurance Co. v. Wilson, (1866), 25 U. C. Q. B. 53. Where it is provided that calls shall be made at certain intervals, several calls can not be made at one time. In computing the interval, the time must be reckoned exclusively of the day on which the previous call was payable. — Bank of Nova Scotia v. Forbes, (1883), 16 N. S. 295; Port Dover, etc., Railway Co. v. Gray, (1875), 36 U. C. Q. B. 425. A shareholder, in an action for calls, may plead a non-compliance with the act of incorporation. — Quebec, etc., Railway Co. v. Dawson, (1851), 1 L. C. R. 366. Where the company began business after the time limited in the charter, and with a fictitious subscription of capital stock, it was held that a subscriber had a good defence to an action for calls. — La Compagnie de Sauvetage de La Puissance v. Brown, (1891), 20 Rev. Leg. 557. But in a proceeding by a receiver of an insurance company for payment of calls, the subscriber can not object that the company's licence had been revoked. — Union Fire Insurance Co. v. Fitzsimmons, (1882), 32 U. C. C. P. 602. Shareholders who sanction a by-law making calls can not thereafter object to any irregularity in the making. — Christopher v. Noxon, (1884), 4 O. R. 672. In the absence of a provision in the act of incorporation, a company may take a note from a subscriber in payment for shares. — St. Stephen Branch Railway Co. v. Black, (1870), 13 N. B. 139. When a company falls into a complete state of disorganization, it can not bring suit for calls without proper authorization. — La Compagnie du Cap Gibraltar v. Lalonde, (1889), M. L. R. 5 S. C. 127. Where a call is made impartially on all shareholders, the Court will not interfere to determine whether or not it was necessary. But if one set of shareholders is discriminated against, *semble*, the Court will interfere to protect them. — Christopher v. Noxon, (1884), 4 O. R. 672. For cases in which it was held, upon the facts, that there had been no such preference or discrimination between classes of shareholders as would invalidate a call, see European, etc., Railway Co. v. McLeod, (1875), 16 N. B. 3; National Insurance v. Hatton, (1879), 2 L. N. 238. A shareholder who transfers his shares after a call is made remains liable for the amount of the call. — Montreal Mining Co. v. Cuthbertson, (1852), 9 U. C. Q. B. 78. In Harris v. Dry Dock Co., (1859), 7 Gr. 450, the Court issued a mandamus, upon an application by a creditor who was also a shareholder, compelling directors to make calls to discharge the indebtedness of the company. The Statute of Limitations does not commence to run against a company until a call is made and notice given. — In re Haggart Bros. Manufacturing Co., Peaker and Runion's Case, (1892), 19 O. A. R. 582. Upon the question of the sufficiency of evidence to show that directors permitted a transfer of shares with the intention of defeating the liability of shareholders for calls, see Thompson v. Canada Insurance Co., (1885), 9 O. R. 284.

**Forfeiture of shares. 56.** If, after a demand therefor, any call is not paid within the time and in the manner provided by the Special Act or letters patent or by-laws the directors, by resolution to that effect, reciting the facts and duly recorded in their minutes, may summarily forfeit any shares whereupon such payment is not

made; and the same shall thereupon become the property of the company and may be disposed of, as by by-law or otherwise the company may ordain; provided that such forfeiture shall not relieve any shareholder of any liability to the company or any creditor

R. S. O. c. 191, § 35. The power to forfeit shares must be regarded as totally distinct from that of accepting a surrender of shares. In the former case no change is effected in the liability of the holder; in the latter he is relieved from further liability on his shares. The remedy given to the company to enforce payment by forfeiture of shares is cumulative, and, where no forfeiture has been ordered, the right to sue for assessments continues. — *Harris v. Dry Dock Co.*, (1859), 7 Gr. 450. In an action for calls, where no forfeiture has been made, the shareholder can not avail himself of the provisions of this section. The right to order a forfeiture is discretionary with the company. — *Ontario Marine Insurance Co. v. Ireland*, (1855), 5 U. C. C. P. 135. The power given to the directors to forfeit shares for non-payment of calls is intended to be executed only when the circumstances of the shareholder render it expedient in the interests of the company, and can not be employed for the benefit of the shareholder. — *Common v. McArthur*, (1898), 29 S. C. R. 239. Forfeiture is strictly construed by the courts. The requirements of the charter with respect to the contents of the notice and the length of time which is to elapse between the notice and the forfeiture must be strictly complied with. It was accordingly held that the notice must state correctly the amount due for non-payment of which the stock was to be forfeited. — *Robertson v. Banque de Hochelaga*, (1881), 4 L. N. 314; *Nelles v. Second Mutual Building Society*, (1881), 29 Gr. 399; but see *Gilman v. Royal Canadian Insurance Co.*, (1884), M. L. R. 1 S. C. 1. Where the shareholder is dead, notice should be given to his personal representative. — *Glass v. Hope*, (1869), 16 Gr. 420. Where no time for payment of the call was limited in the statute, letters patent, or by-laws, the call was held to be illegal, and the attempted forfeiture of stock ineffectual. — *Armstrong v. Merchants, etc., Manufacturing Co.*, (1900), 32 O. R. 387. Where a call was regularly made, and defendant gave to the company a note in payment of such call, the failure on the part of the company to present the note at the proper place for payment did not prevent it from ordaining defendant's shares forfeited, after a subsequent demand for payment and a failure to comply therewith. — *Freemen v. Canadian, etc., Insurance Co.*, (1908), 17 O. L. R. 296. Where the board of directors was not legally appointed, a resolution by them ordering a forfeiture was held invalid. — *Christopher v. Noxon*, (1884), 4 O. R. 672. For another case where proceedings to forfeit shares were held invalid because of irregularity, see *Brady v. Stewart*, (1887), 15 S. C. R. 82. The directors of a company, and not the shareholders, are the proper persons to make a call and to give notice of a forfeiture of shares. Hence, the irregular action of the directors in so doing can not be ratified by a resolution passed at a subsequent meeting of shareholders. — *Paul v. Kobald*, (1906), 3 West. L. R. 407. Where a call is made it is the duty of the directors to use all reasonable means to compel every shareholder to pay the assessment, and directors must bona fide believe that payments can not be obtained before they are justified in invoking the power of forfeiture. — *In re D. Wade Co.*, (1902), 2 Alb. 117; 10 West. L. R. 407.

**Issue of share warrants. 57.** A company authorized to do so by letters patent or supplementary letters patent and subject to the provisions thereof, may, with respect to any share which is fully paid up, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the share or shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the share or shares included in such warrant, hereinafter referred to as a share warrant.

Imp. § 37 (1).

**Holders of share warrants. 58.** A share warrant shall entitle the bearer of such warrant to the shares specified in it and such shares may be transferred by the delivery of the share warrant.

Imp. § 37 (2).

**Surrender of share warrants. 59.** The bearer of a share warrant shall, subject to the provisions and regulations contained in the letters patent or supplementary letters patent respecting share warrants, be entitled on surrendering such warrant for cancellation, to have his name entered as a shareholder in the register of shareholders, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of shareholders the name of any bearer of a share warrant in respect of the shares specified therein without the share warrant being surrendered and cancelled.

Imp. § 37 (3).

**Holders of share warrants not to be deemed shareholders for certain purposes. 60.** The bearer of a share warrant may, if the regulations respecting share warrants so provide, be deemed to be a shareholder of the company, either to the full extent or for such purposes as may be prescribed by such regulations; provided, that the bearer of a share warrant shall not be qualified in respect of the shares specified in



such warrant for being a director of the company in cases where such a qualification is prescribed by the by-laws of the company.

Imp. § 37 (4).

**Entries in register where share warrant issued. 61.** On the issue of a share warrant in respect of any share, the company shall strike out of its register of shareholders the name of the shareholder then entered therein as holding such share as if he had ceased to be a shareholder, and shall enter in the register the following particulars: 1. The fact of the issue of the warrant; 2. The statement of the shares included in the warrant distinguishing each share by its number; 3. The date of issue of the warrant.

Imp. § 37 (5).

**Entries of share warrants. 62.** Until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by section 113 of this Act, to be entered in the register of shareholders of a company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a shareholder.

**Deposit of share warrants. 63.** The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the share included in the deposited warrant. Not more than one person shall be recognized as depositor of the share warrant. The company shall on two days' written notice return the deposited share warrant to the depositor.

**Holders of share warrants not to sign requisition for meetings. 64.** Subject as herein otherwise expressly provided no person shall, as a bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company; or be entitled to receive any notices from the company, but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

**Lost share warrant. 65.** The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

**Trusts. 66.** The company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, in respect of any share; and the receipt of the shareholder in whose name the same stands on the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, whether or not notice of the trust has been given to the company; and the company shall not be bound to see to the application of the money paid upon such receipt.

R. S. O. c. 191, § 31; Imp. § 27. See Dominion Companies Act, notes to § 161, *supra*. The entry of shares as being "in trust," is sufficient of itself to show that the title of the seller is not absolute, and to put the purchaser on inquiry as to the title of the vendor. — *Sweeny v. Bank of Montreal*, (1885), 12 S. C. R. 661; *Raphael v. McFarlane*, (1890), 18 S. C. R. 183; *cp. London & Canadian, etc., Co. v. Duggan*, (1893) A. C. 506. Where plaintiff purchased shares from defendants and received from them a certificate made out in the name of a third person and by him endorsed with a transfer in blank, it was held that this completed the duty of the defendants and that it was not incumbent upon them to see that the plaintiff should become registered as owner of the shares upon the books of the company. — *Boulton v. Wills*, (1908), 15 O. L. R. 227.

**Trustees, etc., may vote. Mortgagor of stock may vote. Joint holders of stock. 67.** 1. Every executor, administrator, guardian, or trustee shall represent the shares in his hands, at all meetings of the company, and may vote accordingly as a shareholder, and every person who mortgages or hypothecates his shares may, nevertheless, represent the same at all such meetings, and may vote accordingly as a shareholder, unless in the instrument creating the mortgage or hypothecation he shall have expressly empowered the holder of such mortgage or hypothecation to vote thereon in which case only such holder or his proxy may vote in respect of said shares. 2. If shares be held jointly by two or more persons, any one of them present at a meeting may, in the absence of the other or others, vote thereon, but

if more than one joint shareholder be present or be represented by proxy, they shall vote together on the shares jointly held.

R. S. O. c. 191, § 36.

**Liability of shareholders. 68.** Each shareholder, until the whole amount of his shares has been paid up, shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon, but shall not be liable to an action therefor by any creditor before an execution against the company has been returned unsatisfied in whole or in part; and the amount due on such execution, but not beyond the amount so unpaid on his said shares, shall be the amount recoverable, with costs, against such shareholders.

R. S. O. c. 191, § 37 (1); Imp. § 123. See *Dominion Companies Act*, note to § 39, *supra*. Where defendants took stock in a company which they paid for in land considerably over-valued, it was held that the stock must be considered as fully paid up since the transaction was not shown to be fraudulent. — *Jones v. Miller*, (1893), 24 O. R. 268; see also *Sloan's Case*, (1894), 23 S. C. R. 644; *In re North Bay Supply Co.*, (1905), 6 O. W. R. 85. Shares may likewise be paid for in services. — *Ingles v. Wellington Hotel Co.*, (1878), 29 U. C. C. P. 387. If, however, the consideration is grossly inadequate, the directors may be personally liable for misfeasance. — *In re Manes Tailoring Co.*, (1907), 14 O. L. R. 89. Upon the question of whether an allotment is necessary to constitute a subscriber a shareholder, see notes to *Dominion Winding-up Act*, § 51, *supra*. In order to bring an action, in Ontario, against a shareholder of a company whose head office is in another Province, it is sufficient to show a return of execution unsatisfied in such other Province. — *Bryce v. Monro*, (1885), 12 O. A. R. 453. The fact that the company has fallen into a complete state of disorganization does not discharge the shareholders from their liability on shares to creditors of the company. — *Hughes v. La Compagnie de Villas du Cap Gibraltar*, (1889), M. L. R. 5 S. C. 129. After a winding-up order has been made, a judgment creditor of the company can not bring an action, under this section, against a contributory for payment of the amount unpaid on his shares. A proposed incorporator who, before incorporation, takes an active part in the prosecution of the intended business of the company, and who sanctions or ratifies the conduct of affairs by some act not being a mere subscription to shares, is liable to contribute to an obligation properly incurred in carrying out the objects of the projected company. — *Sandusky Coal Co. v. Walker*, (1896), 27 O. R. 677. In the following cases, in which defendant was sought to be charged with the statutory liability of a shareholder, under this section, the question at issue was whether or not defendant had entered into a valid contract of membership. The liability sought to be imposed in these cases was one accruing while the company was solvent, and should be distinguished from the liability which arises under a winding-up proceeding. See *Dominion Winding-up Act*, notes to § 51, *supra*. See also *Dominion Companies Act*, notes to § 39, *supra*. Defendant held liable; *Davidson v. Grange*, (1854), 4 Gr. 377, (subscription as agent and trustee for another); *Tilsonburg, etc., Manufacturing Co. v. Goodrich*, (1885), 8 O. R. 565, (attempted repudiation on ground of misrepresentation); *Petrie v. Guelph Lumber Co.*, (1885), 11 O. A. R. 336; affirmed s. c. (1886), 11 S. C. R. 450, (subscription induced by fraud; delay in rescission); *Magog Textile Co. v. Price*, (1887), 14 S. C. R. 664, (attempted repudiation on grounds of misrepresentation); *In re Haggart Bros. Manufacturing Co., Peaker and Runion's Case*, (1892), 19 O. A. R. 582, (attempted rescission of contract to take shares); *Nelson Coal & Coke Co. v. Pellatt*, (1902), 4 O. L. R. 481, (sufficiency of acceptance and allotment); *In re Provincial Grocers*, (1905), 10 O. L. R. 705, (attempted withdrawal of sealed offer to subscribe); *Traders Insurance Co. v. Apps*, (1910), 15 O. W. R. 562, (alleged fraud in obtaining subscription); *Purse v. Gowanda Queen Mines Company*, (1910), 15 O. W. R. 287, (attempted withdrawal of subscription). Defendant held not liable: *Provincial Insurance Co. v. Brown*, (1850), 9 U. C. C. P. 286, (subscription obtained by surprise and fraud); *Ingersoll, etc., Co. v. McCarthy*, (1858), 16 U. C. Q. B. 162, (unauthorized subscription in defendant's name by secretary of company); *Glen Brick Co. v. Shackwell*, (1870), 2 Rev. Leg. 625, (contract induced by fraud and misrepresentation); *Ingles v. Wellington Hotel Co.*, (1878), 29 U. C. C. P. 387, (shares paid for in services); *Cote v. Stadacona Insurance Co.*, (1881), 6 S. C. R. 193, (contract induced by fraud and misrepresentation); *Patterson v. Turner*, (1902), 3 O. L. R. 373, (unreasonable delay in formation of company); *McCallan v. Sun Savings & Loan Co.*, (1902), 1 O. W. R. 226, (subscription induced by misrepresentation and threats); *Ottawa Dairy Co. v. Sorley*, (1904), 34 S. C. R. 508, (conditional subscription); *Bernard v. Hurteau*, (1906), Q. R. 30 S. C. 184, (subscription by a minor); *Kruger v. Harwood*, (1907), 6 Man. R. 433, (withdrawal of application before acceptance by company); *Gould v. Gillies*, (1908), 42 N. S. 28, (application induced by false representations); *Farrall v. Manchester*, (1908), 40 S. C. R. 339, (purchase of shares induced by misrepresentation); *In re Charles Davies*, (1909), 18 O. L. R. 240, (shares taken as security for accommodation endorsement); *In re Nipissing Planning Mills*, (1909), 18 O. L. R. 80, (signature of a memorandum which did not accompany the petition as prescribed by § 5 (3) of this Act); *Twin City Oil Co. v. Christie*, (1909), 18 O. L. R. 324, (invalid allotment by an officer who had no authority to make it). As to distinction between an application for shares and an offer by the company to sell, which latter may be accepted by the applicant, so that the offer and acceptance close the bargain, see *McDowell v. Macklem*, (1904), 4 O. W. R. 482. As to liability on shares held as collateral security, see *In re Perrin Flour Co.*, (1908), 11 O. W. R. 186.



**Set-off. 69.** Any shareholder may plead by way of defence, in whole or in part, any set-off which he could set up against the company, except a claim for unpaid dividend, or a salary or allowance as a president or a director of the company.

R. S. O. c. 191, § 37 (2). As to when a shareholder will be allowed to set off a debt due from the company in an action by a creditor for unpaid shares, see *Field v. Galloway*, (1884), 5 O. R. 502. A shareholder can not set up, as a defence to an action to recover the amount of a judgment against the company, that such judgment was recovered on notes which the company gave in fraud of creditors. Such defence may be raised only in the original action against the company. — *Shaver v. Cotton*, (1894), 16 O. P. R. 278. For a case where a counter-claim, set up by a shareholder under this section, was not allowed, see *Grills v. Farah*, (1910), 16 O. W. R. 285.

**Shareholders not liable beyond unpaid amount. 70.** The shareholders shall not, as such, be held responsible for any act, default, or liability whatsoever, of the company, or of any engagement, claim, payment, loss, injury, transaction, matter, or thing whatsoever, relating to or connected with the company, beyond the unpaid amount on their respective shares.

R. S. O. c. 191, § 37 (3); Imp. § 128.

**Trustees not personally liable. 71.** No person holding shares as executor, administrator, guardian, or trustee, shall be personally subject to liability as a shareholder; but the estates and funds in the hands of such person shall be liable in like manner and to the same extent as the testator or intestate or the minor, ward, or person, interested in the trust fund, would be, if living and competent to act and holding such shares.

R. S. O. c. 191, § 38.

**Mortgagees. 72.** No person holding shares as collateral security shall, prior to foreclosure, be personally subject to liability as a shareholder, but the person transferring such shares as collateral security shall, until foreclosed, be considered as holding the same, and shall be liable as a shareholder in respect thereof.

R. S. O. c. 191, § 39. Where a mortgagee of shares had taken a transfer absolute in form and entered as such on the books of the company, he was allowed, nevertheless, to prove the transaction to be a mortgage. — *Page v. Austin*, (1884), 10 S. C. R. 132, affirming s. c. (1882), 7 O. A. R. 8 which reversed s. c. (1879), 30 U. C. C. P. 108. But a loan company, which advances money on shares, which shares are transferred to it by an absolute assignment, can not escape liability as a contributory on the ground that it is merely a trustee for the borrower. — *In re Central Bank of Canada, Home Savings & Loan Case*, (1891), 18 O. A. R. 489; see also *In re Union Fire Insurance Co., McCord's Case*, (1891), 21 O. R. 264. Where partly paid-up shares were transferred to the defendant for the purpose of voting at a meeting of shareholders and no re-transfer was made, defendant was held liable as a contributory in the winding-up proceeding. — *Ontario Investment Association v. Leys*, (1893), 23 O. R. 496; and see *In re President, etc., Bank*, (1869), 12 N. B. 514.

## *Part V. Preference and Debenture Stock, Debentures and Mortgages.*

**Powers of directors. 73.** [As amended by 8 Edw. 7, c. 43, § 1 (5, 6).] The directors of a corporation may make by-laws: a) For borrowing money; b) For issuing bonds, debentures, or other securities; c) For pledging or selling such bonds, debentures, or other securities for such sum and at such prices as may be deemed expedient or be necessary. And the directors of companies with share capital may make by-laws: 1. For creating and issuing any part of the capital as preference shares; 2. For creating and issuing debenture stock; 3. For the conversion of preference shares into common shares or debentures or debenture stock, debentures into debenture stock or preference shares, or any class of shares or securities into any other class. Provided, however, that nothing in this part of this Act shall apply to promissory notes, bills of exchange, bills of lading, warehouse receipts, or other securities of a commercial nature issued in the ordinary course of business.

R. S. O. c. 191, § 49. The phraseology of this section gives rise to the contention that there is no power to borrow or to create a mortgage except by a by-law. "The weight of opinion, however, seemed to be in favour of the view that a company might validly borrow money and create a valid mortgage where no by-law had been passed, and that the lack of a by-law was an irregularity only, and that outsiders were not affected with notice of such irregularity. — *Sheppard v. Bonanza Nickel Co.*, (1894), 25 O. R. 305; *MacEdwards v. Ogilvie*, (1887), 4 Man. R. 1, at p. 6; *McKain v. Canadian Birbeck Co.*, (1904), 7 O. L. R. 241; *Trusts & Guarantee Com. v. Abbott Mitchell Co.*, (1902), 11 O. L. R. 403." — *Parker and Clark, Company Law*, p. 266. As to whether, in the absence of express authorization, the power to borrow and mortgage will be implied, see notes § 17, *supra*. Persons dealing with the company are affected with notice of the Act under which it is incorporated, and where a corporation is prohibited from buying on credit, there is no remedy against the company or the directors upon an implied

warranty. — *Struthers v. Mackenzie*, (1887), 28 O. R. 381. "Except in British Columbia and Nova Scotia, where the Imperial form of Act obtains, outsiders dealing with the company are not affected with constructive notice of its by-laws or want of by-laws. This view is upheld by Mr. Justice Killam in the case of *McEdwards v. Ogilvie Milling Co.* (1887), 4 Man. R., 1 at p. 6, where he says, 'In this case, of course, the plaintiff must be taken to have notice of all the provisions of the Joint Stock Companies Act, under which the defendant company was incorporated, and it may be, also, that he must be taken to have notice of the contents of the letters patent incorporating the company, as he could become acquainted with them by search in the office of the proper department, but further than that he could not be expected to go,' and the view of the Chancellor in the case of *Sheppard v. Bonanza, etc.*, (1894), 25 O. R. 305, has given strength to the same view. See also *Thompson v. Brantford Electric, etc., Co.*, (1895), 25 O. A. R. 346; *Merchants' Bank v. Hancock*, (1884), 6 O. R. 289; *McDougall v. Lindsay Paper Mill Co.*, (1883), 10 O. P. R. 247." — *Masten, Company Law*, p. 161. For cases upon the lender's rights against the company where borrowing has been ultra vires, see *Bridgewater Cheese Co. v. Murphy*, (1896), 23 O. A. R. 66; *Cayley v. McDonnell*, (1852), 8 U. C. Q. B. 454; *Clark v. Sarnia, etc., Co.*, (1877), 42 U. C. Q. B. 39; *Burnham v. Peterboro*, (1860), 8 Gr. 366. As to the classes of securities to which the term "debenture" is applied, see *Bank of Toronto v. Cobourg, etc., Railway Co.*, (1884), 7 O. R. 1, at p. 7. Upon the question as to whether debentures payable to bearer are negotiable, see: *Trust & Loan Co. v. Hamilton*, (1858), 7 U. C. C. P. 98; *Gott v. Gott*, (1862), 9 Gr. 165; *Geddes v. Toronto Street Railway Co.*, (1864), 14 U. C. C. P. 513; *Parish of St. Cesaire v. McFarlane*, (1887), 14 S. C. R. 738; *Young v. McNider*, (1895), 25 S. C. R. 272. For cases defining the rights of mortgaged debentures in the property of the company, see: *Fellowes v. Ottawa Gas Co.*, (1869), 19 U. C. C. P. 174; *Smith v. Port Dover Railway Co.*, (1885), 12 O. A. R. 288; *Phelps v. St. Catharines Railway Co.*, (1890), 19 O. R. 501; *In re Farmers Loan & Savings Co.*, (1898), 30 O. R. 337. A floating charge may be created upon present and future property. The nature of such charge is explained in *Johnston v. Wade*, (1909), 11 O. W. R. 598. When the business ceases to be a going concern, the floating charge becomes a specific charge. — *Ibid.* See also *Phelps v. St. Catharines Railway Co.*, (1890), 19 O. R. 501. The words "guaranteed by the capital and assets of the company invested in mortgages on real estate," were held sufficient to create a general charge. In *Johnston v. Wade, supra*, it was held that debentures issued by the directors, though purporting to create a lien or charge on the property of the company, were not mortgages within the meaning of the Bills of Sale and Chattel Mortgage Act, and were not, therefore, void against the assignee of the company for the benefit of creditors, because not registered according to the provisions of that Act. In *Diehl v. Carrett*, (1907), 15 O. L. R. 202, leave was given to bring an action against the receiver of a company incorporated under this Act to restrain him from carrying out a certain scheme for a fresh bond issue, notwithstanding that the legality of the scheme had been upheld by a Judge of the High Court of Justice in England. For a case involving the sufficiency of a by-law authorizing the hypothecation of the company's securities and the validity of the endorsement by the company's officers of such securities, see *Standard Bank of Canada v. Stephens*, (1908), 16 O. L. R. 115. For a discussion of the power of a company to mortgage its franchise, see *Bickford v. Grand Junction Railway Co.*, (1877), 1 S. C. R. 696; *Whiteside v. Bell Chamber*, (1872), 22 U. C. C. P. 241; *Peto v. Welland Railway Co.*, (1862), 9 Gr. 455.

**Sanction of by-law. 74.** [As amended by 8 Edw. 7, c. 43, § 1 (7).] No by-law referred to in the last preceding section shall take effect until it has been confirmed by a vote of not less than two-thirds in value of the shareholders or members present in person or by proxy at a general meeting of the company, duly called for considering the same, by notice specifying the terms of the by-law to be confirmed or unanimously sanctioned in writing by the shareholders or members of the company.

By "two-thirds in value of the shareholders" is meant that the votes are to be computed on the face value of the shares held, and not upon the amount paid upon such shares. — *Purdum v. Ontario Loan Co.*, (1892), 22 O. R. 597. Where the notice did not state the purpose of the meeting or that a proposed by-law was to be submitted to the shareholders, it was held that there was no compliance with this section, and, therefore, no valid confirmation of the by-laws. — *Meyers v. Lucknow Elevator Co.*, (1905), 6 O. W. R. 291. For a case where an allotment of new shares, issued upon the approval of two-thirds of the shareholders, but allotted by the directors to themselves for the purpose of acquiring control of the company, was declared invalid, see, *Martin v. Gibson*, (1908), 15 O. L. R. 623.

**Terms of issue of preference shares. 75.** [As amended by 8 Edw. 7, c. 43, § 1 (8).] A by-law for the creation and issue of preference shares or for the conversion of shares, debentures, or debenture stock into preference shares may provide that the holders of such shares shall have such preference as regards dividends and repayment on dissolution or winding-up as may be therein set out; may have the right to select a certain stated proportion of the board of directors, or such other control over the affairs of the company as may be considered expedient; or may limit the right of the holders thereof to specific dividends or control of the affairs of the company or otherwise, not contrary to law or to this Act, and may provide for the purchase or



redemption of such shares by the company as therein set out; provided, however, that any term or provision of such by-law, whereby the rights of holders of such shares are limited or restricted, shall be fully set out in the certificate of such shares, and in the event of such limitations and restrictions not being so set out they shall not be deemed to qualify the rights of holders thereof.

**Consent of holders to redemption. 76.** Unless preference shares, debenture stock, debentures, or bonds are issued subject to redemption or conversion, the same shall not be subject to redemption or conversion without the consent of the holders thereof.

**Supplementary letters patent in certain cases. 77.** No such by-law which has the effect of increasing or decreasing the capital of the company or otherwise varying any term or provision of the Special Act or letters patent of the company shall be valid or acted upon until confirmed by supplementary letters patent.

**Mortgages to secure debentures, etc. 78.** The directors may charge, hypothecate, mortgage, or pledge any or all of the real or personal property, rights and powers, undertaking, franchises, including book debts and unpaid calls of the corporation, to secure any bonds, debentures, or other securities or any liability of the corporation and a duplicate original of such charge, mortgage or other instrument of hypothecation or pledge made to secure bonds, debentures, or other securities, shall be forthwith filed in the office of the Provincial Secretary as well as registered under the provisions of any other Act in that behalf.

Before the word "franchises" was added, it was held under the old Act, (R. S. O. 1897, c. 191, § 49), that the words "real or personal property, rights, and powers of the company" probably covered a mortgage of the franchise of a trading company. — See *Bickford v. Grand Junction Railway Co.*, (1877), 1 S. C. R. 696, at p. 737. But the right of a railway to be a corporation can not be mortgaged. — *Ibid.* p. 738; nor taken on an execution against the company. — *Peto v. Welland Railway Co.*, (1862), 9 Gr. 455. A mortgage by a street railway company on after acquired property is valid. — *Bank of Montreal v. Kirkpatrick*, (1901), 2 O. L. R. 113. Where the directors of a company had mortgaged all its estate and assets to plaintiffs, the condition of the mortgage being that the company could continue to carry on business, and could pledge or mortgage its stock in trade, it was held that, notwithstanding the mortgage, the directors had power to pledge certain materials and debts to a bank without a two-thirds vote of the shareholders, that the transfer of the debts to the bank was a necessary power in the directors in order to carry on the business, and that the pledge was valid in the hands of the bank. — *Trust & Guarantee Co. v. Abbott Mitchell, etc., Co.*, (1902), 11 O. L. R. 403.

## *Part VI. Directors and their Powers, etc.*

**Provisional directors. 79.** The persons named as provisional directors in the Special Act or in letters patent shall be the directors of the company, until replaced by the same number of others duly elected in their stead, and shall be eligible for election.

R. S. O. c. 191, § 41. Provisional directors are merely temporary officers who exercise limited powers until the permanent organization may be perfected. Their powers and duties are defined in *Michie v. Erie & Huron Railway*, (1876), 26 U. C. C. P. 566. But see *Johnston v. Wade*, (1909), 17 O. L. R. 372; 11 O. W. R. 598, where, *semble*, provisional directors were deemed to possess for the time being, all the powers properly exercisable by permanent directors. *Quære*, whether provisional directors have power to pass a by-law authorizing the borrowing of money, to issue bonds and debentures of the company, and to pledge real and personal property to secure such bonds and debentures. — *Ibid.* *Quære*, whether provisional directors have power to deal with such matters as transfers of shares. — *In re Wakefield Mica Co.*, (1906), 7 O. W. R. 104. See *Monarch Life v. Broty*, (1907), 14 O. L. R. 1, where the powers of provisional directors were limited. A person who is employed by a provisional director to do certain work on behalf of the company, such provisional director being intrusted by the company with the duty of promoting the undertaking, and the work having been done with the knowledge of his co-directors, may recover from the company for the value of his work. — *Allen v. Ontario, etc., Railway Co.*, (1898), 29 O. R. 510; see also *North Sydney Co. v. Greener*, (1898), 31 N. S. 41; *Odell v. Boston, etc., Coal Co.*, (1895), 29 N. S. 385; *North Simcoe Railway Co. v. Toronto*, (1874), 36 U. C. Q. B. 101. As to powers of provisional directors of railways, see *North Simcoe Railway Co.*, *supra*; *Michie v. Erie & Huron Railway Co.*, (1876), 26 U. C. C. P. 66. As to the number of provisional directors, see *Manes Tailoring Co. v. Willson*, (1907), 14 O. L. R. 89.

**Board of directors. 80.** The affairs of the company shall be managed by a board of not less than three directors, who shall be elected by the shareholders in general meeting of the company.

R. S. O. c. 191, § 40. Where one of three directors disposed of his stock, it was held that he ceased to be a director and that the board, ipso facto, became incompetent to manage the

affairs of the company. — *Toronto Brewing & Malting Co. v. Blake*, (1882), 2 O. R. 175; see also *First Natchez Bank v. Coleman*, (1903), 2 O. W. R. 358. Directors must act at regularly constituted meetings of which proper notice of the time and purpose of the meeting should be given. A notice calling a special or extraordinary meeting must state particularly the objects of calling such meeting, and no business can be transacted except in relation to the matters specified, unless all members of the board are present and unanimously consent. — *Waddell v. Ontario Canning Co.*, (1889), 18 O. R. 41, at p. 51. An election of directors at a meeting of which all the shareholders have not been notified, is void. — *Milot v. Perrault*, (1886), 12 O. L. R. 193.

**Business must be transacted by quorum of board. 81.** [As amended by 8 Edw. 7, c. 43, § 1 (9).] 1. Except as in this section provided no business of a company shall be transacted by its directors unless at a meeting of directors at which a quorum of the board shall be present. Such quorum shall consist of a majority of the directors of the company. 2. Whenever it shall happen that from any cause there is not a quorum of directors in office the requisition mentioned in section 37 of this Act may be served on such directors of the company as are still in office, and such directors, though less in number than a majority of the board, may nevertheless call a meeting under section 38 for the election of directors to fill the vacancies in the board, and in default of their doing so the requisitionists or other shareholders may call such meeting as in section 38 provided. 3. This section shall not apply to a sole director remaining in office. If there be no directors remaining in office a meeting to elect directors may be called without service of any requisition. 4. So long as a quorum of directors remains in office casual vacancies in the board may be filled by such directors as remain in office.

Vacancies occurring in the board of directors may, unless the by-laws otherwise direct, be filled for the unexpired term by the board from among the qualified shareholders of the company. *Seem*, this power of the board is only exercisable in the interval between the vacancy arising and the date of the next election; after that the vacancy must be filled by the shareholders. — *Kielly v. Kielly*, (1878), 3 O. A. R. 438, at p. 443. The case above cited was decided before the present section was adopted, and Parker and Clark believe that the present section would not be capable of such construction. — *Company Law*, p. 220. And see *Sovereign Mitt Co. v. Whiteside*, (1906), 12 O. L. R. 638. Where a director is disqualified from voting on a particular matter, there must be a quorum present without counting him. — *Wade v. Kendrick*, (1905), 37 S. C. R. 32, at p. 44.

**Executive committee. 82.** [As amended by 8 Edw. 7, c. 43, § 1 (10).] The shareholders of a company, having more than six directors, may, at a general meeting called for that purpose, by resolution of two-thirds of the shareholders present in person or by proxy, authorize the directors to delegate any of their powers to an executive committee, consisting of not less than three, to be elected by the directors from their number. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by such resolution or by the directors.

3 Edw. 7, c. 7, § 35.

**Qualifications of directors. 83.** No person shall hold office as a director unless he is a shareholder absolutely in his own right, and not in arrear in respect of any call thereon, and where any person, who is a director, ceases to be a bona fide holder of shares, he shall thereupon cease to be a director.

R. S. O. c. 191, § 42. See *Kiely v. Smyth*, (1879), 27 Gr. 220, at p. 254, where it was held that two directors, who assigned stock to a third in order to qualify him to act as a director, were afterwards estopped from alleging that he held such stock merely as trustee for them. *Quare*, whether a mortgage, pledge, or transfer of shares, as collateral security, would disqualify a director. — Cp. *Warde, Director's and Shareholder's Manual*, p. 73.

**Yearly elections. Ballot. President and officers. 84.** 1. The election of directors shall take place at the annual meeting, all the members of the board retiring, and (if otherwise qualified) being eligible for re-election. 2. Election of directors shall be by ballot, if demanded. 3. The directors shall, from time to time, elect from among themselves a president of the company, and shall also appoint, and may remove at pleasure, all other officers thereof.

R. S. O. c. 191, § 43. Where the shareholders confirmed a by-law made by the directors, fixing their term of office at one year, the shareholders were bound by it, and could not themselves pass another by-law providing that the appointment should be terminable by resolution. — *Stephenson v. Vokes*, (1896), 27 O. R. 691. An election of officers obtained by trick or artifice is illegal; but where shares have been actually purchased and paid for, the fact that they were purchased for the purpose of influencing the election is no objection. — *Toronto Brewing & Malting Co. v. Blake*, (1882), 2 O. R. 175. But see *Davidson v. Grange*, (1854), 4 Gr. 377, where the Court set aside an election of directors by persons who were merely nominal and not bona fide holders. Directors may not act as scrutineers.



— *Dickinson v. McMurray*, (1881), 28 Gr. 533. Quo warranto will not lie, in the case of an ordinary trading company, to challenge the claim of directors to their offices. — *The Queen v. Hespeler*, (1854), 11 U. C. Q. B. 222. But *semble*, such proceedings may be taken if the company is of a semi-public nature. — *In re Moore and Port Bruce Harbour Co.*, (1857), 14 U. C. Q. B. 365. As to the right to proceed by mandatory injunction, see *Toronto Brewing & Malting Co.*, *supra*. An election of directors before the time of office of their predecessors has expired, is, *semble*, a nullity, and a mandamus will lie ordering the company to proceed to another election on the day fixed by the charter. — *Queen v. Bank of Upper Canada*, (1849), 5 U. C. Q. B. 338. Where there is an irregular election of directors, the Court will not interfere at the instance of individual shareholders, unless the individual can secure the consent of the company to sue in the company's name. — *Kelly v. Electrical Construction Co.*, (1908), 16 O. L. R. 232; 10 O. W. R. 704. A shareholder who has participated in the benefits of an illegal election can not, either individually or suing on behalf of the general body of creditors, maintain an action against the directors of the company. — *Stickney v. Buckel*, (1905), 6 O. W. R. 751.

**Failure to elect directors how remedied.** 85. If at any time an election of directors is not made, or does not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the company duly called for that purpose; and the directors shall continue in office until their successors are duly elected.

R. S. O. c. 191, § 44. As to the meaning of the phrase "general meeting of the company duly called for that purpose," see *Austin Mining Co. v. Gemmell*, (1886), 10 O. R. 696, at p. 706.

**Change by by-law of number of directors or of head office in Ontario.** 86. [As amended by 8 Edw. 7, c. 43, § 1 (11).] 1. A company may, by by-law, vary the number of its directors, but so that the number shall be not less than three, or may change the company's head office in Ontario. 2. No by-law for either of the said purposes shall take effect until confirmed by a vote of not less than two-thirds in value of the shareholders present in person or by proxy at a meeting of the company duly called for considering the same. A copy of the by-law certified under the seal of the company shall be forthwith filed in the office of the Provincial Secretary and published in the *Ontario Gazette*; and in case of the removal of the head office, twice in a newspaper published in each of the places where the head office was fixed and to where it is to be removed, or as near thereto as may be.

R. S. O. c. 191, § 45 (1). For a case where the number of directors had not been reduced in accordance with the provisions of this section, and where an issue of preferred shares by the reduced number of directors was, consequently, held invalid, see *Manes Tailoring Co. v. Willson*, (1907), 14 O. L. R. 89.

**Powers of directors.** 87. The directors may, from time to time, make by-laws not contrary to law, or to the letters patent of the company, or to this Act, to regulate: a) The allotment of shares; the making of calls thereon; the payment thereof; the issue and registration of certificates of shares; the forfeiture of shares for non-payment; the disposal of forfeited stock and of the proceeds thereof; the transfer of shares; b) The declaration and payment of dividends; c) The term of service, manner of selection, and the qualification of the directors; d) The time at which and place where the meetings of the company shall be held; the calling of meetings of the company; the requirements as to proxies; and the procedure in all things at such meetings; e) The imposition and recovery of all penalties, and forfeitures admitting of regulation by by-law, and f) The conduct in all other particulars of the affairs of the company; and may from time to time repeal, amend, or re-enact the same; but every such by-law, and every repeal, amendment, or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company duly called for that purpose, shall only have force until the next annual meeting of the company; and in default of confirmation thereat shall, at and from that time only, cease to have force; and in that case no new by-law to the same or the like effect or re-enactment thereof, shall have any force until confirmed at a general meeting of the company; provided, however, that the company shall have the power either at a general meeting called as aforesaid, or at the annual meeting of the company, to repeal, amend, vary, or otherwise deal with any by-laws which have been passed by the directors, but no act done or right acquired under any by-law shall be prejudicially affected by any such repeal, amendment, variation, or other dealing.

R. S. O. c. 191, § 47. Directors, though elected for a year only, may engage managers and other agents for a longer period. — *Howarth v. Singer Manufacturing Co.*, (1883), 8 O. A. R. 264, at p. 270; see also *Falkiner v. Grand Junction Railway*, (1883), 4 O. R. 350. Directors of a mercantile company, acting through their manager, may deposit goods in a warehouse, and raise money on security of the same. — *Merchants Bank v. Hancock*, (1883), 6 O. R. 285. In *Real Estate Investment Co. v. Metropolitan Building Society*, (1883), 3 O. R. 476, a company was held liable on a covenant

of warranty made by directors, the covenant not being ultra vires the company. But where the engagement on behalf of the company is not in the ordinary course of business, the company is not bound unless it ratifies it. — *Hamilton, etc., Railway v. Gore Bank*, (1873), 20 Gr. 190, at p. 194. Such ratification, however, need not be expressed; it will be implied from an acquiescence for a sufficient time. — *Conant v. Niall*, (1870), 17 Gr. 574; *Brightwater Cheese Co. v. Murphy*, (1896), 23 O. A. R. 66; *Merchants Bank v. Hancock*, (1883), 6 O. R. 285; *Herford v. The Queen*, (1894), 24 S. C. R. 1. Directors can not delegate statutory power to allot stock or make calls. — *In re Bolt & Iron Co., Hovenden's Case*, (1884), 10 O. P. R. 434; *Twin City Oil Co. v. Christie*, (1909), 18 O. L. R. 324. But they may employ agents who will have power to bind the company within the limits of their agency. — *Thompson v. Brantford Electric Co.*, (1898), 25 O. A. R. 340; *Bain v. Anderson*, (1896), 27 O. R. 369; *National Malleable Co. v. Smiths Falls*, (1907), 14 O. L. R. 22; *Sheppard v. Bonanza Nickel Co.*, (1894), 25 O. R. 305. In the absence of special agreement, directors are under no duty to pledge their own credit for the benefit of the company. — *Christopher v. Noxon*, *In re Ingersoll Gas Co.*, (1884), 4 O. R. 672, at p. 682. Where the shareholders at a general meeting have sanctioned a by-law providing for the allotment of shares by the shareholders themselves, the directors have no power to pass a second by-law directing the repeal of the first, and providing for the allotment of shares by themselves. — *Stephenson v. Vokes*, (1896), 27 O. R. 691. The provisions of this Act empowering directors to pass by-laws in respect of certain matters, denies to the shareholders the power to pass by-laws in respect of the same matters. — *Kelly v. Electrical Construction Co.*, (1907), 10 O. W. R. 704; see also *Beudry v. Read*, (1907), 10 O. W. R. 622. Where, by a by-law, borrowing functions are vested in directors, their exercise can not be controlled by resolution of shareholders. — *Cann v. Eakins*, (1891), 23 N. S. 475. Where there is power to borrow granted to the directors, a shareholder can not prevent a loan being taken on any terms not illegal. — *Farrell v. Carrihou Mining Co.*, (1897), 30 N. S. 199. Directors may, without special statutory authority or formal assent of all shareholders, make a general assignment for the benefit of creditors of the company, even though such assignment has the effect of terminating the existence of the company. — *Hovey v. Whiting*, (1888), 14 S. C. R. 515; *Donley v. Holmwood*, (1880), 4 O. A. R. 555. Where shares were allotted to one of the directors of a company at par, in consideration of his supplying the company with funds, and where no opposition was made by the shareholders to his voting such shares at a general meeting, the shareholders were held to have ratified the allotment and could not afterwards object to it. — *Christopher v. Noxon*, (1884), 4 O. R. 672. For a case defining the implied powers of a managing director, see *National Malleable Co. v. Smiths Falls*, (1907), 14 O. L. R. 22. Where the general manager was authorized by the by-laws to compromise claims and to do other acts requiring legal advice, it was held that he had implied authority to retain a solicitor. — *Clarke v. Union Fire Insurance Co.*, (1884), 10 O. P. R. 339. For further cases on the powers of managers, see: *Hamilton, etc., Railway Co. v. Gore Bank*, (1873), 20 Gr. 190; *Canada Central Railway Co. v. Murray*, (1887), 8 S. C. R. 313; *Laberge v. Equitable Life Insurance Society*, (1895), 24 S. C. R. 595; *Galloway v. Stobart*, (1904), 35 S. C. R. 301. As to powers of the president of a company, see: *Almon v. Law*, (1894), 26 N. S. 340; *Northwest Transportation Co. v. Beatty*, (1887), 12 A. C. 589. Directors of a company who approve of a sale to the company, of property at a gross over-valuation, are liable to account to the company for the loss sustained. — *Boyle v. Rothschild*, (1907), 10 O. W. R. 696. In *Martin v. Gibson*, (1907), 10 O. W. R. 66, judgment was given restraining the voting upon an increase of capital stock, where the shares were issued by the directors themselves for the purpose of acquiring control of the company, and declaring that the allotment was in excess of the director's powers. A corporation is liable for the acts of its agents to the same extent as a private individual. In *Kinver v. Phoenix Lodge, etc.*, (1885), 7 O. R. 377, the corporation was held liable for the acts of an agent done in the presence of the members assembled at a meeting. A company is liable for libel. — *Carroll v. Penberthy Injector Co.*, (1889), 16 O. A. R. 446; *Tench v. Great Western Railway Co.*, (1872), 32 U. C. Q. B. 452. It may also be liable for false imprisonment. — *In re McSorley v. Mayor of St. John*, (1881), 6 S. C. R. 531. The company is a necessary party, in actions against directors, for an account of profits. — *Meyers v. Cain*, (1905), 6 O. W. R. 834. A power of attorney given in the name of the company and under its common seal by the managing officers of the company, and also signed by the secretary is valid, and is, prima facie, the act of the company. — *In re Brooke Co.*, (1904), 7 Q. P. R. 206. Where the managing director, without special authorization from the board of directors, entered into a contract to supply materials, the fulfilment of which would require an extension of the company's plant, it was held that such extension of the plant would fall within the scope of the managing director's authority, and that, in an action by plaintiff to recover for breach of contract, the company could not set up that the act of the manager was beyond his power. — *National Malleable Co. v. Smiths Falls Co.*, (1907), 14 O. L. R. 22. In *Kunz v. Silver Spring Co.*, (1910), 15 O. W. R. 826, an application for an injunction, restraining the company and directors from selling out the plant to its president at an alleged under-valuation, and from paying sums to directors for services, was denied.

**Payments to president or directors.** 88. No by-law for the payment of the president or any director shall be valid or acted upon until the same has been confirmed at a general meeting.

60 Vic. c. 28, § 46. This section applies only to payment for services of a director qua director, and for services of the president as presiding officer of the board. — *In re Ontario*



Express & Transportation Co., (1894), 25 O. R. 587. The managing director is a working member of the company, and not a mere servant, and can only receive remuneration so far as there is express provision made therefor in the charter or by-laws of the company. Where a director, who is also president of the company, was appointed by the board of directors, and acted as solicitor for the company, it was held, in winding-up proceedings, that he was entitled to costs in respect of causes conducted by him in court, but not in respect of business done out of court. — *In re Mimico, etc., Co.*, (1895), 26 O. R. 289. Shareholders can authorize remuneration to directors only out of the assets properly divisible among the shareholders themselves, and not out of capital. — *In re Publishers Syndicate*, (1902), 5 O. L. R. 392. Directors are not entitled to remuneration in any capacity, except by virtue of a by-law of the company regularly adopted. — *Birney v. Toronto Milk Co.*, (1902), 5 O. L. R. 1; *Benor v. Canadian Mail Order Co.*, (1907), 10 O. W. R. 899; *Beaudy v. Reid*, (1907), 10 O. W. R. 622. Where the president and vice-president of a company, for several years and without proper authority, but with the acquiescence of their co-directors elected by and closely connected with the majority of shareholders, drew large sums ostensibly as salaries as general manager and managing director, it was held that dissatisfied shareholders could object to such payments, although the majority were prepared to ratify them. — *Earle v. Burland*, (1902), 27 O. A. R. 540; reversed on another point, *Burland v. Earle*, (1902) A. C. 83; see also *Gardner v. Canadian Manufacturing Co.*, (1900), 31 O. R. 488. As to the right of a director to payment of commissions on sale of stock, see *Stickney v. Buckel*, (1905), 6 O. W. R. 751; to payment for past services, see *Bertram v. Birtwistle*, (1908), 11 O. W. R. 315; to expenditures made on behalf of the company, see *Benor v. Canadian Mail Order Co.*, (1907), 10 O. W. R. 899; to payment of profit made by a lease of the company's plant, see *Meyers v. Cain*, (1905), 6 O. W. R. 834. In an action by the president of a company to recover for services as president, where it appeared that a by-law had been passed by the directors providing that the president, among other officers, should receive such remuneration as might by resolution of the board be determined, and that such by-law had been confirmed at a general meeting of the shareholders, it was held that this was a sufficient compliance with this section, and that there was no necessity that each contract for payment should be confirmed by the shareholders. — *McKenzie v. Maple Mountain Mining Co.*, (1910), 15 O. W. R. 728, reversing decision of Divisional Court, (1909), 20 O. L. R. 170; 14 O. W. R. 1266.

**Directors not to vote on contracts in which they have a personal interest, etc.**  
**89.** No director of any company shall at any directors' meeting vote in respect of any contract or arrangement made or proposed to be entered into with the company in which he is interested either as vendor, purchaser, or otherwise, and any director who may be in any way interested in any contract or arrangement proposed to be made with the company shall disclose the nature of his interest at the meeting of the directors at which such contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest, and in case he discloses the nature of his interest, and refrains from voting, he shall not be accountable to the company by reason of the fiduciary relationship existing for any profit realized by such contract or arrangement; provided, however, that no director shall be deemed to be in any way interested in any contract or arrangement, nor shall he be disqualified from voting or be held liable to account to the company by reason of his holding shares or being a director in any other company with which a contract or arrangement is made or contemplated; provided, also that this section shall not apply to any contract by or on behalf of a company to give the directors or any of them security by way of indemnity.

2 Edw. 7, c. 24. § 1. Where a contract, fair in its terms and within the powers of the company, has been entered into by its directors with one of their number as sole vendee, such director may vote as a shareholder at a general meeting of shareholders to ratify the contract even though he controls the majority of the votes. — *Northwest Transportation Co. v. Beatty*, (1887), 12 A. C. 589. A sale by directors to one of their number may be ratified by the shareholders. — *Ellis v. Norwich Broom Co.*, (1906), 8 O. W. R. 25. Where a director had a judgment against the company and, upon a foreclosure and sale of the company's property, purchased the same, he was held a trustee for the company, and accountable for any profit received on a re-sale. — *In re Iron, etc., Manufacturing Co.*, (1889), 19 O. R. 113. The above case defines the duties and liabilities of directors resulting from their fiduciary relations with the company. Upon the appointment of a liquidator in winding-up proceedings, the fiduciary relation between the directors and the company is at an end. — *Chatham National Bank v. McKeen*, (1895), 24 S. C. R. 348. See *Dominion Winding-up Act*, notes to § 31, *supra*. See also § 178 (6), *infra*. Directors are as free as any other shareholders in dealing with their shares. They are not trustees for the general body of creditors, except, perhaps, with respect to their qualification shares. — *Thompson v. Canada Fire Insurance Co.*, (1885), 9 O. R. 284. Where directors issued to themselves debentures of the company at a discount of 25% in satisfaction of their claims against the company it was held that, inasmuch as the transaction was not ultra vires, it was incompetent for other debenture holders to question the transaction, and that the company was the only party to complain. — *Bank of Toronto v. Cobourg Railway*, (1883), 10 O. R. 376.

**Not to purchase shares of any other corporations. 90.** [As amended by 8 Edw. 7, c. 18, § 2.] The company shall not, unless authorized by the Special Act, letters patent, or supplementary letters patent, use any of its funds in the purchase of shares of any other corporation except as hereinbefore provided until the directors have been expressly authorized by a by-law passed by them for the purpose and confirmed by a vote of not less than two-thirds in value of those shareholders present in person or by proxy at a general meeting of the company duly called for considering the same.

R. S. O. c. 191, § 82; 1 Edw. 7, c. 18, § 2.

**Liability of directors declaring a dividend when company is insolvent, etc. How a director may void such liability. 91.** The directors of the company shall not declare or pay any dividend when the company is insolvent, or any dividend the payment of which renders the company insolvent, or diminishes the capital thereof; but if any director present when such dividend is declared, forthwith, or if any director then absent, within twenty-four hours after he has become aware thereof, and able so to do, enters his written protest against the same, and within eight days thereafter causes such protest to be notified, by registered letter, to the Provincial Secretary, such director may thereby, and not otherwise, exonerate himself from liability.

R. S. O. c. 191, § 83. In general, it is for the directors, and not the stockholders, to determine whether or not a dividend should be declared and, in the absence of bad faith or neglect of duty, the Court will not interfere with the exercise of their discretion. In *Burland v. Earle*, (1902) A. C. 83, the Privy Council held, (reversing the Court of Appeals for Ontario, (1900), 27 O. A. R. 540), that the company is not bound to distribute all its profits among its shareholders. It can legally reserve any part thereof, at the discretion of the directors. The undivided part may be invested in such securities as the directors may select, subject to the general control of the meeting, but not restricted to such investments as trustees are authorized to make. See also *Montreal Street Railway Co. v. Ritchie*, (1889), 16 S. C. R. 622. In *Banque d'Epargne v. Geddes*, (1890), M. L. R. 6 S. C. 243, it was held that directors who declare fictitious or unlawful dividends are personally liable, except as to shareholders who knew and approved of such dividends, or who failed to attend a meeting duly called at which they might have learned of the same. In *Northern Navigation Co. v. Long*, (1905), 11 O. L. R. 230, the company was permitted to recover from the estate of a deceased president for damages suffered by the company by reason of false statements as to the financial condition of the company, laid before the directors by the deceased, which statements induced them to declare a dividend which they would not have declared had they been aware of the true condition of the company; see also *Parker v. McQuesten*, (1872), 32 U. C. Q. B. 273.

**Stock dividends. 92.** For the amount of any dividend which the directors may lawfully declare payable, in money, they may declare a stock dividend and issue therefor shares of the company as fully paid or partly paid, as the case may be, or may credit the amount of such dividend on the shares of the company already issued but not fully paid and the liability of the holders of all shares mentioned in this section shall be reduced by the amount of such dividend.

**No loan by company to shareholders. 93.** No loan shall be made by the company to any shareholder, and if such loan is made all directors and other officers of the company making the same and in any wise assenting thereto, shall be jointly and severally liable to the company for the amount thereof, and also to third parties to the extent of such loan with legal interest, for all debts of the company contracted from the time of the making of the loan to that of the repayment thereof.

R. S. O. c. 191, § 84.

**Liability of directors for wages. 94.** [As amended by 8 Edw. 7, c. 43, § 1 (13).] The directors of the company shall be jointly and severally liable to the labourers, servants, and apprentices thereof for all debts not exceeding one year's wages due for services performed for the company while they are such directors respectively; but no director shall be liable to an action therefor, unless the company has been sued therefor within one year after the debt became due, nor unless such director is sued therefor within one year from the time when he ceased to be such director, nor before an execution against the company has been returned unsatisfied in whole or in part; and the amount due on such execution shall be the amount recoverable with costs against the directors.

R. S. O. c. 191, § 85. A person employed as foreman, who hires and dismisses men, pays out wages, and does no manual labor, and in addition to receiving a salary is paid for the use of machinery belonging to him, is not a labourer, servant, or apprentice within the meaning of this section. — *Welch v. Ellis*, (1895), 22 O. A. R. 255. But see *Turner v. Fee*, (1904), 24 C. L. T., (Occ. N.) 402, where plaintiff, who did manual labor, but was also a supervisor over other labourers



was held to be a "labourer or servant" within the meaning of a similar section, (2 Edw. 7, c. 15, § 41), and entitled to succeed in an action against the directors of the company for unpaid wages. As to right of an assignee of wages to sue, see *In re American Tire Co.*, (1903), 2 O. W. R. 29; *In re Ritchie, Hearn Co.*, (1905), 6 O. W. R. 474; cp. *Fayne v. Langley*, (1899), 31 O. R. 254, decided under the Ontario Wages Act. In *Lee v. Friedman*, (1909), 20 O. L. R. 49, an equitable assignee of labourers, was allowed to sue directors after execution against the company had been returned unsatisfied, notwithstanding that the judgment against the company was irregular, no fraud having been shewn.

### *Part VII. Prospectus, and Directors' Liability.*

**"Prospectus," meaning of. Application of this Part. 95.** 1. In this Act the word "prospectus" shall mean any prospectus, notice, circular, advertisement, or other invitation offering for subscription or purchase any shares, debentures, or other securities of a company, or published or issued for the purpose of being used to promote or aid in the subscription or purchase of such shares, debentures or securities, and the word "company" shall mean any company incorporated or proposed to be incorporated. 2. This part of this Act shall apply to every company whether formed before or after the commencement of this Act, which offers for subscription or sale, shares, debentures, or other securities and to every company whether incorporated under the laws of the Province of Ontario or otherwise, the shares, debentures, or other securities of which are dealt in within the Province of Ontario.

Imp. § 285.

**Commissions. Capital not to be applied in paying commissions except as authorized. Brokerage may be paid. 96.** 1. Upon any offer of shares to the public for subscription, it shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission and the amount or rate per cent, of the commission paid or agreed to be paid are respectively authorized by the letters patent or supplementary letters patent and disclosed in the prospectus, and the commission paid or agreed to be paid does not exceed the amount or rate so authorized. 2. Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company or procuring or agreeing to procure subscriptions, whether absolutely or conditionally, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise. 3. Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

Imp. § 89. What is a reasonable brokerage depends on circumstances and, where the contradicted testimony was that the amount was not unreasonable, a commission was allowed. — *In re Co-operative Cycle Co.*, (1902), 1 O. W. R. 778.

**What companies must file prospectuses. 97.** 1. Every company heretofore or hereafter incorporated under any general or Special Act, the number of shareholders of which is increased to a number greater by ten than the number of applicants for incorporation or which has its debentures or other securities held by more than ten persons, and every company incorporated otherwise than as above set out which has more than ten shareholders or holders of debentures or other securities within Ontario, shall file a prospectus in the manner hereafter set out. 2. All purchases, subscriptions, or other acquisitions of shares, debentures, or other securities of any company required in the manner above provided to file a prospectus, shall be deemed as against the company or the signatories to the prospectus to be induced by such prospectus, and any term, proviso, or condition of such prospectus to the contrary shall be void. 3. No subscription for stock, debentures, or other securities, induced or obtained by verbal representations, shall be binding upon the subscriber, unless prior to his so subscribing he shall have received a copy of the prospectus.

**Date of prospectus. Prospectus to be signed and filed. Not to be issued until filed. 98.** 1. Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus. 2. A copy of every

such prospectus shall be signed by every person who is named therein as a director or proposed director or provisional director of the company, or by his agent authorized in writing, and shall be filed with the Provincial Secretary, on or before the date of its publication. 3. The Provincial Secretary shall not receive or file any prospectus unless it is so dated and signed. No prospectus shall be issued until so filed, and every prospectus shall state on the face of it that it has been so filed.

Imp. § 80.

**What to be disclosed in prospectus. 99.** 1. Every prospectus issued by or on behalf of a company or in relation to any intended company or by or on behalf of any person who is or has been engaged or interested in the formation or promotion of the company, shall state: a) The names, descriptions, and addresses of the original incorporators, and the number of shares subscribed for by them respectively; b) The number of shares, if any, fixed as the qualification of a director, and any provision in the by-laws of the company as to the remuneration of the directors; c) The names, descriptions, and addresses of the directors or proposed directors; d) The minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment, and the amount actually allotted; e) The time or times at which under the by-laws of the company a further call or calls may be made upon shares subscribed for; f) The number and amount of shares issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and the number and amount of bonds, debentures, or other securities issued or to be issued and allotted to any person; g) The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication of the prospectus and the amount payable in cash, shares, bonds, debentures, or other securities to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor; h) The amount (if any) paid or payable as purchase money in cash, shares, or debentures of any such property as aforesaid, specifying the amount payable for good-will; i) The amount (if any) paid or payable as commission for subscribing, or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in the company, or for underwriting or procuring underwriting of any securities issued or to be issued by the company or the rate of any such commission; j) The amount or estimated amount of preliminary expenses; k) The amount paid or intended to be paid in cash, shares, or debentures to any promoter, and the consideration for any such payment; l) The dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected; provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than three years before the date of publication of the prospectus; m) The names and addresses of the auditors (if any) of the company; n) Full particulars of the nature and extent of the interest (if any) of every director in the promotion of or in the property proposed to be acquired by the company, with a statement of all sums paid or agreed to be paid to him in cash or shares by any person either to qualify him as a director or otherwise for services rendered by him in connection with the formation of the company. 2. For the purposes of this section the word "vendor" shall extend to and include a vendor who has entered into any contract, absolute or conditional, for the sale or purchase or for any option of purchase of any property to be acquired by the company in any case where: a) The purchase money is not fully paid at the date of publication of the prospectus; or b) The purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or c) The contract depends for its validity or fulfilment on the result of such issue. 3. Where any of the property to be acquired by the company is to be taken on lease this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease and the rent, and the expression "sub-purchaser" included a sub-lessee. 4. This section shall not apply to a circular or notice inviting existing shareholders or debenture holders of a company to subscribe for further shares or debentures; but subject as aforesaid,



this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently; provided that a) The requirements as to the original incorporators and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus published more than one year after the date of the first general meeting, and b) In the case of a prospectus published more than one year after the date of such meeting, the obligation to disclose all material contracts shall be limited to a period of two years immediately preceding the publication of the prospectus. 5. Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus shall be void. 6. Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary to specify the names of original incorporators and the number of shares subscribed for by them.

Imp. § 81. See Dominion Companies Act, notes to § 43, *supra*.

**Penalty. Liability under general law not affected. 100.** [As amended by 8 Edw. 7, c. 43, § 1 (14, 15).] 1. Every provisional director, director, or other person responsible for the issue and publication of such prospectus shall for every violation of the provisions of the next preceding three sections be liable on summary conviction to a penalty not exceeding \$200 and costs, provided that no provisional director, director, or other person responsible for the prospectus shall incur any liability by reason of non-compliance with the said sections: a) As regards any matter not disclosed, if he was not cognizant thereof; or b) If the non-compliance arose from an honest mistake of fact on his part, And provided that in the event of non-compliance with the requirements contained in paragraph n) of subsection 1. of section 99, no director or other person shall incur any liability in respect of such non-compliance, unless it is proved that he had knowledge of the matters not disclosed. 2. Nothing in this section or the said preceding three sections shall limit or diminish any liability which any person may incur under the general law apart from this Act.

Imp. § 81.

**Capital to be correctly stated in advertisements, etc. Penalty. Who may prosecute. Application of penalty. 101.** [As amended by 8 Edw. 7, c. 43, § 1 (16).] 1. Where any advertisement, letter head, account, or document issued or published by any corporation or any officer, agent, or employee, of any such corporation, purports to state the capital of the corporation, then the capital actually and in good faith subscribed and no more shall be so stated. 2. Any such corporation, officer, agent, or employee who causes to be inserted an advertisement or who publishes, issues, or causes to be published or issued any advertisement, letter-head, account, or document which states as the capital of such corporation any larger sum than the amount of such subscribed capital so actually and in good faith subscribed as aforesaid, or which contains any false statement as to the incorporation, control, supervision, management, or financial standing of such corporation shall be liable, upon summary conviction, to a penalty not exceeding \$200 and costs, and not less than \$50 and costs. 3. Any one may be prosecutor or complainant under this section, and one-half of any fine imposed by virtue of this Act, shall, when received, belong to His Majesty for the use of the Province, and the other half shall belong to the prosecutor or complainant.

R. S. O. c. 217.

**Liability for statements in prospectus. 102.** 1. Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in, or debentures or debenture stock or other security of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorized such naming of him is named in the prospectus or notice as a director of the company or as having agreed to become a director of the company either immediately or after an interval of time, and every promoter of the company and every person who has authorized the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock or other security on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith, unless it

is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice, of such withdrawal and of the reason therefor to be given. 2. A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting solely in a professional capacity for persons engaged in procuring the formation of the company.

Imp. § 84 (1).

**Statements in prospectus for raising further capital. 103.** Where any company, which has issued shares or debentures or other securities, shall be desirous of obtaining further capital by subscriptions for shares or debentures or other securities, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorized the issue of such prospectus or notice, or have adopted or ratified the same.

Imp. § 84 (2).

**Indemnity where name of person has been improperly inserted. 104.** Where any such prospectus or notice as aforesaid contains the name of a person as a director of a company, or as having agreed to become a director thereof, and such person has not consented to become a director or has withdrawn his consent before the issue of such prospectus or notice, and has not authorized or consented to the issue thereof, the directors of the company (except any without whose knowledge or consent the prospectus or notice was issued) and any other person who authorized the issue of such prospectus or notice shall be liable to indemnify the person named as director of the company, or as having agreed to become a director thereof as aforesaid, against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

Imp. § 84 (3); 54 Vic. c. 34, § 5; 60 Vic. c. 3, § 3; c. 28, § 95 (3).

**Contribution from co-director. 105.** Every person who by reason of his being a director, or named as a director, or as having agreed to become a director, or of his having authorized the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract from any other person who, if sued separately, would have been liable to make the same payment.

54 Vic. c. 34, § 6; 60 Vic. c. 3, § 3; c. 28, § 95 (4); Imp. § 84 (4).

### *Part VIII. Companies offering Shares for public Subscription.*

**Restrictions on allotment. 106.** 1. No allotment shall be made of any share capital by a company offering shares for public subscription, unless the following conditions have been complied with, namely: a) The amount (if any) named in the prospectus as the minimum subscription upon which the directors may proceed to allotment, or b) If no amount is so fixed and named, then the whole amount of the share capital so offered for subscription has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription has been paid to and received by the company. 2. The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription. 3. The amount payable on application on each share shall not be less than five per centum of the nominal amount of the share. 4. If the conditions aforesaid have not been complied with on the expiration of ninety days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to the applicants without interest, and if any such money is not so repaid within one hundred days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the ninety days; provided that a director shall not be liable if he proves that the loss of the money was not due



to any misconduct or negligence on his part: Provided, however, that the Provincial Secretary may from time to time extend the times herein limited. 5. Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void. 6. This section, except subsection 3. thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Imp. § 85.

**Effect of irregular allotment. 107.** 1. An allotment made by a company to an applicant in contravention of the foregoing provisions of this part of this Act shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up. 2. If any director of a company knowingly contravenes or permits or authorizes the contravention of any of the foregoing provisions of this part of this Act with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby; provided that proceedings to recover such loss or damage or costs shall not be commenced after the expiration of two years from the date of the allotment.

Imp. § 86.

**Restrictions on commencement of business. 108.** 1. A company shall not commence any business or exercise any borrowing powers unless: a) Shares, held subject to the payment of the whole amount thereof in cash, have been allotted to an amount not less in the whole than the minimum subscription; and b) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and c) There has been filed with the Provincial Secretary a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with. 2. The Provincial Secretary may, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled; provided, however, that upon it being shewn that such certificate was made upon any false statement or upon the withholding of any material statement, the Provincial Secretary may cancel and annul such certificate. 3. Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding. 4. Nothing in this section shall prevent the simultaneous offer for subscription of any shares and debentures or the receipt of any application. 5. If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding fifty dollars for every day during which the contravention continues.

Imp. § 87. "It would seem, however, that a company may at least issue a prospectus, allot stock and enter into provisional contracts of various kinds, which contracts become binding on the company the moment it is entitled to receive the official certificate. See *Howland v. McNab*, (1860), 8 Gr. 47; *Goodwin v. Ottawa & Prescott Railway*, (1863), 13 U. C. C. P. 254; *Dominion Salvage v. Attorney-General*, (1892), 21 S. C. R. 72; *Hardy v. Pickersel River Co.*, (1898), 29 S. C. R. 211." — *Parker and Clark, Company Law*, p. 307.

**Moneys to be held in trust. 109.** All sums received by the company or by any promoter director, officer, or agent thereof shall be held in trust by the company or such promoter, director, officer, or agent until the same may be deposited in a chartered bank to the credit of the company and shall there remain in trust until the issue of the aforesaid certificate by the Provincial Secretary.

**Return of allotments. 110.** 1. Whenever a company makes any allotment of its shares the company shall, within one month thereafter, file with the Provincial Secretary: a) A return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and b) In the case of shares allotted in whole or in part for consideration other than cash, a contract in writing constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which

such allotment was made, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted. 2. If default is made in complying with the requirements of this section every director, manager, secretary, or other officer of the company who is, knowingly, a party to the default, shall be liable upon summary conviction to a fine not exceeding fifty dollars for every day during which the default continues.

Imp. § 88 (1, 3).

**Statutory meetings. 111.** 1. Every company shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the shareholders of the company, which shall be called the statutory meeting. 2. The directors shall, at least ten days before the day on which the meeting is held forward to every shareholder of the company a report certified by not less than two directors of the company, stating: a) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted; b) The total amount of cash received by the company in respect of such shares, distinguished as aforesaid; c) An abstract of the receipts and payments of the company on capital account to the date of the report, and an account or estimate of the preliminary expenses of the company; d) The names, addresses, and descriptions of the directors, auditors (if any), manager (if any), and secretary of the company; and e) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification. 3. The report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company. 4. The directors shall cause a copy of the report, certified as by this section required, to be filed with the Provincial Secretary forthwith after the sending thereof to the members of the company. 5. The directors shall cause a list showing the names, descriptions, and addresses of the shareholders of the company, and the numbers of shares held by them, respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any shareholder of the company during the continuance of the meeting. 6. The shareholders of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been duly given may be passed. 7. The meeting may adjourn from time to time, and at any such adjourned meeting any resolution of which notice has been duly given, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting. 8. If default is made in filing such report as aforesaid or in holding the statutory meeting, then at the expiration of fourteen days after the last day on which the meeting ought to have been held any shareholder may petition the Court for the winding-up of the company in the manner hereinafter provided in that behalf, and, upon the hearing of the petition, the Court may either direct that the company be wound up or give directions for the report being filed or a meeting being held, or make such other order as may be just, and may order that the costs of the petition be paid by any persons who, in the opinion of the Court, are responsible for the default.

Imp. § 65.

**Application of this part. 112.** This Part of this Act shall apply to all companies offering shares for public subscription and shall not apply to a company incorporated before the commencement of this Act.

### *Part IX. Books, Inspections, and Auditors.*

**Record book to be kept and what to contain. 113.** The corporation shall cause the secretary, or some other officer especially charged with that duty, to keep a book or books wherein shall be kept recorded: a) A copy of the letters patent incorporating the corporation and of any supplementary letters patent issued to the corporation, and if incorporated by Special Act, a copy of such Act; b) The names, alphabetically arranged, of all persons who are or have been shareholders or members of the corporation; c) The post office address and calling of every such person while such share-



holder or member; d) The names, post office addresses, and callings of all persons who are or have been directors of the corporation, with the several dates at which each person became or ceased to be such director. And in cases of companies having share capital: e) The number of shares held by each shareholder; f) The amounts paid in, and remaining unpaid, respectively, on the shares of each shareholder; g) The date and other particulars of all transfers of shares in their order.

R. S. O. c. 191, § 71; Imp. § 25.

**Books to be kept at head office. Proviso. 114.** The books referred to in the preceding section as well as those referred to in section 120 shall be kept at the head office of the company within the Province, whether the company is permitted to hold its meetings out of Ontario or not. Any director, officer, or employee of a company who shall remove or assist in removing such books from Ontario, or who shall act contrary to the provisions of this section shall be liable on summary conviction to a penalty of \$ 200; provided, however, that upon necessity therefor being shewn and adequate assurance being given that such books may be inspected within Ontario by any person entitled thereto after application for such inspection to the Provincial Secretary, the Lieutenant-Governor in Council may relieve any company permitted to hold its meetings out of Ontario from the provisions of this section upon such terms as may be fit.

Imp. § 30 (1).

**Penalty for false entries. 115.** No director, officer, or servant of the corporation shall knowingly make or assist to make any untrue entry in any book or books of the company, or shall refuse or neglect to make any proper entries therein; and any person violating wilfully the provisions of this section shall, besides any criminal liability which he may thereby incur, be liable in damages for all loss or injury which any person interested may have sustained thereby.

R. S. O. c. 191, § 72; Imp. § 216.

**Powers of Judges as to entries in, omissions from, and rectification of books.**

**Decision as to title. Appeal. 116.** 1. If the name of any person is without sufficient cause, entered in or omitted from such book or books of the corporation, or if default is made or unnecessary delays take place in entering in said books the fact of any person having ceased to be a shareholder or member of the corporation, the person or shareholder or member aggrieved, or any shareholder or member of the corporation, or the corporation itself may apply to a Judge of the High Court of Justice for an order that the book or books be rectified, and the Judge may either refuse such application or he may make an order for the rectification of the said book or books, and may direct the corporation to pay the costs of such motion or application and any damages the party aggrieved may have sustained. The Judge may in any proceeding under this section, decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the said books of the corporation, whether such question arises between two or more shareholders, or alleged shareholders or members, or between any shareholders or alleged shareholders or members and the corporation, and the Judge may in any such proceeding decide any question which it may be necessary or expedient to decide for the rectification of the said books. 2. The Judge may direct an issue to be tried in which any question of law may be raised. 3. An appeal shall lie from the decision of such Judge as if the same had been given in an action. 4. This section shall not deprive any Court of any jurisdiction it may have. 5. The costs of any proceeding under this section shall be in the discretion of the Judge.

R. S. O. c. 191, § 73; Imp. § 32. See cases cited in notes to § 48, *supra*. There should be a demand on the proper officers of the company, and a refusal or unreasonable delay in complying with the same before resort be had to the remedy afforded by this section. — *Nelles v. Windsor Railway Co.*, (1908), 11 O. W. R. 463; see also *In re Dominion Oil Co.*, (1903), 2 O. W. R. 826.

**Books to be open for inspection. 117.** The books referred to in section 113 shall during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders, members, and creditors of the corporation and their personal representatives or agents, at the head office or chief place of carrying on its undertaking, and every such shareholder, member, creditor, agent, or representative, may make extracts therefrom.

R. S. O. c. 191, § 74; Imp. § 30 (1, 2). An application for the issue of an injunction is not the proper proceeding to compel a company to allow a shareholder to inspect its books. — *Plamondon v. Blouin*, (1905), Q. R. 28 S. C. 149.

**Liability for refusal to allow inspection of books.** 118. Any director or officer who refuses to permit any person entitled thereto to inspect such book or books, or make extracts therefrom, shall be liable upon summary conviction to a penalty of \$ 100.

R. S. O. c. 191, § 75; Imp. § 30 (3).

**Books to be prima facie evidence.** 119. Such books shall be prima facie evidence of all facts purporting to be thereby stated, in any action or proceeding against the corporation or against any shareholder or member.

R. S. O. c. 191, § 76; Imp. § 220.

**Books of account to be kept.** 120. The directors shall cause proper books of account to be kept containing full and true statements: a) Of the financial transactions of the corporation; b) Of the assets of the corporation; c) Of the sums of money received and expended by the corporation, and the matters in respect of which such receipt or expenditure takes place; and d) Of the credits and liabilities of the corporation; and also a book or books containing minutes of all the proceedings and votes of the corporation, or of the board of directors, respectively, and the by-laws of the corporation, duly authenticated, and such minutes shall be verified by the signature of the president, or other presiding officer of the corporation.

R. S. O. c. 191, § 77. See § 114, *supra*.

**False returns, etc.** 121. If any person in any return, report, certificate, balance-sheet, or other document required by or for the purposes of this Act, wilfully makes a statement false in any material particular he shall be liable on summary conviction to imprisonment not exceeding three months, with or without hard labour, and to a fine of \$ 100 in lieu of or in addition to such imprisonments aforesaid.

R. S. O. c. 191, § 97; Imp. § 281.

**The Court may appoint an inspector. Examination by company. Powers and duties of inspector. Production of books and documents. Examination on oath. Penalty for non-production.** 122. 1. Upon an application by not less than one-fifth in value of the shareholders of a company, or one-fifth in number of the members of a corporation without share capital, a Judge of the High Court of Justice may appoint an inspector to investigate the affairs and management of the corporation. Such inspector shall report thereon to the Judge, and the expense of such investigation shall, in the discretion of the Judge, be defrayed by the corporation or by the applicants, or partly by the corporation and partly by the applicants, as he may order, and he may require the applicants to give security to cover the probable cost of the investigation, and he may make rules and prescribe the manner in which and the extent to which the investigation shall be conducted; or the Judge may examine the officers or directors of the company under oath as to matters that shall come in question. 2. A corporation may by resolution passed at the annual meeting, or at a special general meeting called for the purpose, appoint an inspector to examine into the affairs of the corporation. The inspector so appointed shall have the same powers and perform the same duties as an inspector appointed by a Judge of the High Court of Justice, and he shall make his report in such manner and to such persons as the corporation by said resolution directs. 3. It shall be the duty of all officers and agents of the corporation to produce for the examination of any such inspector all books and documents in their custody or power. Any such inspector may examine upon oath the officers and agents of the corporation in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the corporation, he shall upon summary conviction be liable to a fine not exceeding \$ 20, in respect of each offence.

R. S. O. c. 191, § 80; Imp. §§ 109, 110.

**Accounts shall be audited.** 123. The accounts of the corporation shall be examined once at least in every year, and the correctness of the balance-sheet shall be ascertained by an auditor or auditors.

R. S. O. c. 191, § 87; Imp. § 112.

**First auditors.** 124. The first auditors of the corporation may be appointed by the directors before the first meeting of the shareholders or members, and the auditors so appointed shall hold office until the first general meeting.

Imp. § 112 (5).

**Appointment of auditors.** 125. Thereafter the auditors shall be appointed by resolution at a general meeting of the corporation; they shall hold office until the next



annual meeting, unless previously removed by a resolution of the shareholders or members in general meeting.

R. S. O. c. 191, § 88; Imp. § 112 (1).

**Auditors may be shareholders. 126.** The said auditors may be shareholders or members of the corporation, but no person shall be eligible as an auditor who is interested, otherwise than as a shareholder or member, in any transaction of the corporation, and no director or other officer of the corporation shall be eligible during his continuance in office.

R. S. O. c. 191, § 89; Imp. § 112 (3).

**Provincial Secretary may appoint. 127.** If an appointment of auditors is not made at an annual meeting, the Provincial Secretary may, on the application of any member or shareholder of the corporation, appoint an auditor of the corporation for the current year, and fix the remuneration (if any) to be paid to him by the corporation for his services.

Imp. § 112 (2).

**Directors may fill vacancies. 128.** The directors of a corporation may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act, and any auditor shall be eligible for re-appointment.

Imp. § 112 (6).

**Remuneration of auditors. 129.** The remuneration of the auditors of a corporation shall be fixed by the corporation in general meeting, except that the remuneration of any auditors appointed before the first general meeting or to fill any casual vacancy may be fixed by the directors.

Imp. § 112 (7).

**Rights and duties of auditors. 130.** Every auditor of a corporation shall have the right of access at all times to the books, accounts, and vouchers of the corporation, and shall be entitled to require from the directors and officers of the corporation such information and explanation as may be necessary for the performance of his duties, and the auditors shall sign a certificate at the foot of the balance-sheet stating whether or not their requirements as auditors have been complied with and shall make a report to the shareholders or members on the accounts examined by them, and on every balance-sheet laid before the corporation in general meeting during their tenure of office; and in every such report shall state whether, in their opinion, the balance-sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the corporation's affairs as shown by the books of the corporation; and such report shall be read before the corporation in general meeting.

Imp. § 113.

### *Part X. Returns and Fees.*

**Annual summary of the affairs of the company. Contents of summary. List of shareholders. Deposit with Provincial Secretary. Penalty for default. When section not to apply. 131.** [As amended by 8 Edw. 7, c. 43, § 1 (18).] 1. The corporation shall, on or before the first day of February in every year, make out a summary, verified as hereinafter required, containing as of the thirty-first day of December preceeding, correctly stated, the following particulars: a) The corporate name of the corporation; b) The manner in which the corporation is incorporated, whether by Special Act, or by letters patent, and the date thereof; c) The name, residence, and post office address of the president, secretary, and treasurer of the corporation; d) The name, residence, and post office address of each of the directors of the corporation; e) The date upon which the last annual meeting of the corporation was held. In case of companies having share capital in addition; f) The place of the head office, giving street and number when possible; g) The amount of the capital of the company and the number of shares into which it is divided; h) The number of shares subscribed for and allotted; i) The number of shares (if any) issued fully paid as consideration for any transfer of assets, good will or otherwise; if none is so issued, this fact to be stated; j) The amount of calls made on each share; k) The total amount of calls received; l) The total amount of shares forfeited; m) The total amount of shares issued as preference shares and the rate of dividend thereon; n) The total amount paid on such shares; o) The total amount of debentures, debenture stock, or bonds authorized, and the rate of interest thereon; p) The total amount of debenture stock, bonds, or debentures issued; q) The total amount realized from debentures, debenture stock, and bonds; r) The total number of share warrants issued

and the names and addresses of the persons to whom same were issued. If the company be a mining company: s) The number of shares sold or otherwise disposed of at a discount or premium; t) The rate at which such shares were sold or disposed of; u) Whether a sworn copy of the by-laws, if any, providing for the sale of stock at a discount or otherwise, was sent to the Provincial Secretary; v) The date, or dates, upon which such by-laws, if any, were passed and sanctioned. 2. In cases of companies having share capital the summary shall also contain a list of persons who, on the thirty-first day of December previously, were shareholders of the company; and such list shall state the names alphabetically arranged, and the address and occupation of each such person; the amount of stock held by each; and the amount, if any unpaid and still due by each such person. 3. A duplicate of such summary with the affidavit of verification, shall be posted up in a conspicuous position in the head office of the company on or before the second day of February in each year, and shall be available for inspection by any shareholder or creditor of the company; and the company shall keep the same so posted until another summary is posted under the provisions of this Act. 4. The summary of every corporation shall be verified by the affidavit of the president and secretary, and if there are no such officers, or they, or either of them, are, or is, at the proper time out of this Province or otherwise unable to make the same, by the affidavit of the president or secretary and one of the directors, or two of the directors, as the case may require; and if the president or secretary does not make or join in the affidavit the reason thereof shall be stated in the substituted affidavit. 5. The summary, verified as aforesaid, shall, on or before the eighth day of February next after the time hereinbefore fixed for making the summary, be transmitted to the Provincial Secretary. 6. If a corporation makes default in complying with the provisions of this section, the corporation shall incur a penalty of \$ 20 for every day during which the default continues, and every director, manager or secretary of the corporation, who knowingly and wilfully authorizes or permits such default, shall incur the like penalty, but such penalties shall be recoverable only by action at the suit of or brought by a private person suing on his own behalf with the written consent of the Attorney-General of the Province of Ontario. 7. This section shall not apply to any corporation until the first day of February next after the thirty-first day of December of the year in which the corporation was organized, or has gone into actual operation, whichever shall first happen. 8. Corporations heretofore incorporated under any Act hereby repealed, except chapter 191 of the Revised Statutes of Ontario, 1897, and Act and Acts consolidated therewith or for which the said Act was substituted shall make such returns under the section as are required from corporations without share capital.

R. S. O. c. 191, § 79; Imp. § 26.

**Fees on letters patent, etc., to be fixed by Order-in Council. 132.** 1. The Lieutenant-Governor in Council may from time to time, establish, alter, and regulate the tariff of fees to be paid to the Provincial Secretary on applications, returns, filings, and all transactions under this Act; and may prescribe the form of proceedings and record in respect thereof, and all other matters requisite for carrying out the objects of this Act. 2. Such fees may be made to vary in amount, under any rule or rules—as to nature of the corporation, amount of capital, and otherwise—that may be deemed expedient. 3. No step shall be taken in the Department towards the issue of any letters patent or supplementary letters patent, or the filing of any document under this Act, until all fees therefor and all fees due the Department for any other service have been duly paid.

R. S. O. c. 191, § 95; Imp. § 118.

**No compliance with Act to file returns, etc., without payment of fees. 133.** No tender or transmission of any return, by-law, or other document shall be deemed to be a due compliance with the provisions of this Act unless and until the prescribed fee for receiving and filing the same has been paid to and has been accepted by the Provincial Secretary.

**Evidence of by-laws. 134.** A copy of any by-law of the corporation under its seal and purporting to be signed by any officer of the corporation or a certificate, similarly authenticated, to the effect that a person is a shareholder or member of the corporation that a call or calls or dues, assessments, or other payments has or have been made are due and have not been paid shall be received as prima facie evidence of the by-law or of the statements contained in such certificate in all Courts in Ontario.

R. S. O. c. 191, § 66.



**Authentication of summons and notices. 135.** Any writ, notice, order, or proceeding requiring authentication by the corporation may be signed by any director, manager, or other authorized officers of the corporation, and need not be under the seal of the corporation.

R. S. O. c. 191, § 67; Imp. § 117.

**Service of notices. 136.** A notice or demand to be served or made by the corporation upon a shareholder or member may be served or made either personally or by post, registered, and addressed to the shareholder or member at his place of abode as it last appeared on the books of the corporation.

R. S. O. c. 191, § 68.

**Time of service. Proof of service. 137.** A notice or other document served by post by the corporation on a shareholder or member shall be held to be served at the time when the registered letter containing it would be delivered in the ordinary course of post; and to prove the fact and time of service it shall be sufficient to prove that such letter was properly addressed and registered, and was put into the post office, and the time when it was put in, and the time requisite for its delivery in the ordinary course of post.

R. S. O. c. 191, § 69.

**138.** Any by-law by this Act required to be sanctioned by a two-thirds vote of the shareholders at a general meeting specially called for considering the same may in lieu thereof be validly sanctioned by the consent in writing of all the shareholders.

### *Part XI. Mining Companies.*

[139—146. Relate to mining companies.]

### *Part XII. Trust Companies.*

[147—153. Relate to trust companies.]

### *Part XIII. Companies operating Municipal Franchises and Public Utilities.*

[154—168. Relate to public service companies.]

### *Part XIV. Expropriation.*

[169—170. Relate to expropriation.]

### *Part XV. Winding-up Companies.*

**Case of death of contributory. 171.** If a contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs and devisees shall be liable in due course of administration to contribute to the assets of the corporation in discharge of the liability of such deceased contributory, and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly.

R. S. O. c. 222, § 3.

**Nature of liability of contributory. 172.** The liability of any person to contribute to the assets of a corporation under this Act, in the event of the same being wound up, shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability.

**Voluntary winding-up. 173.** A corporation may be wound up voluntarily under this Act: 1. Where the period, if any, fixed for the duration of the corporation by the Act, charter, or instrument of incorporation has expired; or where the event (if any) has occurred, upon the occurrence of which it is provided by the Act or Letters Patent or instrument of incorporation that the corporation is to be dissolved and the corporation in general meeting has passed a resolution requiring the corporation to be wound up; 2. Where the corporation in general meeting called for that purpose has passed a resolution requiring the corporation to be wound up; 3. Where the corporation (though it may be solvent as respects creditors) has passed a resolution in general meeting to the effect that it has been proved to its satisfaction that the corporation cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same.

R. S. O. 1887, c. 183, § 4.

**Commencement of winding-up. 174.** A winding-up shall be deemed to commence at the time of the passing of the resolution authorizing the winding-up.  
R. S. O. 1887, c. 183, § 6.

**Corporation to cease business. 175.** Whenever a corporation is wound up voluntarily, the corporation shall, from the date of the commencement of such winding-up, cease to carry on its undertaking, except in so far as may be required for the beneficial winding-up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the corporation, taking place after the commencement of such winding-up, shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its constating instrument or by-laws, continue until the affairs of the corporation are wound up.

R. S. O. c. 222, § 8.

**Notice of resolution to be given. 176.** Notice of any resolution passed for winding up a corporation voluntarily shall be given by advertisement in the *Ontario Gazette* and filed in the office of the Provincial Secretary.

**No suit or action against corporation after winding-up. 177.** After the commencement of the winding-up, no suit, action, or other proceeding shall be proceeded with or commenced against the corporation, and no attachment, sequestration, distress, or execution shall be put in force against the estate or effects of the corporation. Provided, however, that after a winding-up order has been made by the Court as hereinafter provided, such suit action or other proceeding, attachment, sequestration, distress, or execution may be proceeded with by leave of the Court and subject to such terms as the Court may impose. And further provided that this section shall not apply to any proceeding taken under *The Winding up Act* of the Parliament of the Dominion of Canada or other Act respecting insolvency or bankruptcy for the time being in force.

**Consequences of winding-up. Privilege of claims of clerks and employees allowed to a certain extent. 178.** The following consequences shall ensue upon the voluntary winding-up of a corporation: 1. The property of the corporation shall be applied in satisfaction of all its liabilities *pari passu*, and, subject thereto, shall, unless it be otherwise provided by the by-laws of the corporation, be distributed *pro rata* amongst the members or shareholders according to their rights and interests in the corporation; 2. In distributing the assets of the corporation, the salary or wages of all clerks and wage earners in the employment of the corporation due at the date of the commencement of the winding-up or within one month before, not exceeding three months' salary or wages, shall be paid in priority to the claims of the ordinary general creditors, and such persons shall be entitled to rank as ordinary or general creditors for the residue of their claims; 3. Liquidators shall be appointed for the purpose of winding-up the affairs of the corporation and distributing the property; 4. The corporation in general meeting shall appoint such person or persons as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him; 5. If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him; 6. Upon the appointment of liquidators all the powers of the directors shall cease except in so far as the corporation in general meeting or the liquidators may sanction the continuance of such powers; 7. When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two; 8. The liquidators shall settle the list of contributories of the corporation and any list so settled shall be prima facie evidence of the liability of the persons named therein to be contributories; 9. The liquidators may at any time after the passing of the resolution for winding up the corporation and before they have ascertained the sufficiency of the assets of the corporation, call on all or any of the contributories, for the time being settled on the list of contributories, to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the corporation, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories among themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same; 10. The liquidators



shall pay the debts of the corporation and adjust the rights of the contributories, shareholders, or members amongst themselves.

R. S. O., c. 222, § 8.

**Payment of costs and expenses. 179.** All costs, charges, and expenses properly incurred in the voluntary winding-up of a corporation, including the remuneration of the liquidators, shall, after taxation by a taxing officer of the High Court who is hereby empowered to tax the same, be payable out of the assets of the corporation in priority to all other claims.

R. S. O., c. 222, § 20.

**Power of liquidator. 180.** The liquidators shall have power to do the following things: 1. To bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the corporation; 2. To carry on the business of the corporation so far as may be necessary for the beneficial winding-up of the same; 3. To sell the real and personal property, effects, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or corporation, or to sell the same in parcels; 4. To do all acts and execute, in the name and on behalf of the corporation, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the corporation's seal; 5. To draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the corporation, also to raise upon the security of the assets of the corporation, from time to time, any requisite sum or sums of money; and the drawing, accepting, making, or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the corporation shall have the same effect with respect to the liability of such corporation as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf of such corporation in the course of carrying on the business thereof; 6. To take out, if necessary, in his official name, letters of administration to the estate of any deceased contributory and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate and which act can not be conveniently done in the name of the corporation; and in all cases where he takes out letters of administration or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself; 7. To do and execute all such other things as may be necessary for winding-up the affairs of the corporation and distributing its assets.

R. S. O. c. 222, § 9; Imp. §§ 151, 186. Where the liquidator of a company which was being wound up voluntarily sold the assets en bloc to a private individual, without the sanction of the contributories, and obtained an order from the County Court approving the sale, it was held that the order was made without authority, and was a nullity. — *In re D. A. Jones Co.*, (1892), 19 O. A. R. 63. As the main purpose of the Act is an expeditious division of the assets of the company among the creditors and members, the power to carry on the business, and thus to postpone the final winding-up, is one that can be exercised only in exceptional cases. — *In re Haggert Bros. Manufacturing Co.*, (1893), 20 O. A. R. 597.

**Inspectors. 181.** A corporation about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by resolution, delegate to any committee of its members, contributories, or creditors, hereinafter referred to as inspectors, the power of appointing liquidators and filling any vacancies in the office of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised; and any act done by the said inspectors in pursuance of such delegated power shall have the same effect as if it had been done by the corporation.

Imp. § 160.

**Deposit in bank by liquidators. Separate deposit account to be kept; withdrawal from account. Liquidators to produce bank pass book at meetings, etc. Liquidator to produce bank pass book when ordered. 182.** 1. The liquidators shall deposit at interest in some chartered bank to be indicated by the inspectors all sums of money which they may have in their hands, belonging to the corporation, whenever such sums amount to \$ 100. 2. Such deposit shall not be made in the name of the liquidator generally, on pain of dismissal; but a separate deposit account shall be kept for the corporation of the moneys belonging to the corporation, in the name of the liquidator as such, and of the inspectors (if any); and such moneys shall be withdrawn only on the joint cheque of the liquidator and one of the inspectors, if there be any.

3. At every meeting of the shareholders or members of the corporation the liquidators shall produce a pass-book, showing the amount of deposits made for the corporation, the dates at which the deposits were made, the amounts withdrawn and dates of such withdrawal; of which production mention shall be made in the minutes of the meeting, and the absence of such mention shall be prima facie evidence that the pass-book was not produced at the meetings. 4. The liquidator shall also produce the pass-book whenever so ordered by the Court at the request of the inspectors or a member of the corporation, and on his refusal to do so, he shall be treated as being in contempt of court.

R. S. O. c. 222, § 19 (3—6); Imp. § 154.

**Meetings of corporation during winding-up. 183.** Where a corporation is being wound up voluntarily, the liquidators may from time to time, during the continuance of such winding-up, summon general meetings of the corporation for the purpose of obtaining the sanction of the corporation by resolution, or for any other purposes they think fit; and in the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the corporation at the end of the first year and of each succeeding year from the commencement of the winding-up, and shall lay before such meeting an account shewing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.

R. S. O. c. 222, § 22 (2, 3); Imp. § 219.

**Vacancy in office of liquidator. 184.** If any vacancy occurs in the office of liquidators appointed by the corporation, by death, resignation, or otherwise, the corporation in general meeting may, subject to any arrangement they may have entered into upon the appointment of inspectors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the corporation, and shall be deemed to have been duly held in manner prescribed by the by-laws of the corporation, or in default thereof in the manner prescribed by this Act for calling general meetings of the shareholders or members of the corporation.

R. S. O. c. 222, § 25 (1); Imp. § 189.

**Liquidators may distribute assets after expiration of time fixed. 185.** The provisions of section 38 of chapter 129 of The Revised Statutes of Ontario shall apply mutatis mutandis to liquidators.

**Arrangements may be authorized with creditors. 186.** The liquidators may, with the sanction of a resolution of the corporation or the inspectors, make such compromise or other arrangements as the liquidators deem expedient, with any creditors, or persons claiming to be creditors, or persons having or alleging to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the corporation whereby the corporation may be rendered liable.

R. S. O. c. 222, § 11; Imp. § 191.

**Power to compromise with debtors and contributories. Take security. 187.** The liquidators may, with the sanction of a resolution of the corporation or of the inspectors, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the corporation and any contributory or other debtor or person apprehending liability to the corporation and all questions in any way relating to or affecting the assets of the corporation, or the winding-up of the corporation, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon; and the liquidators to take any security for the discharge of such debts and liabilities, and give a complete discharge in respect of all or any such calls, debts, or liabilities.

R. S. O. c. 222, § 12; Imp. 151.

**Power to accept shares, etc., as a consideration for sale of property to another company. Sale or arrangement by liquidators binding unless a member objects. Proceedings on objection. Special resolution not invalid because prior to resolution to wind up. Price payable to dissentient member. 188.** 1. Where a corporation is proposed to be or is in the course of being up, and the whole or a portion of its business or property is proposed to be transferred or sold to another corporation, the liquidators of the first mentioned corporation, with the sanction of a resolution



of the corporation by whom they were appointed conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, may receive, in compensation or in part compensation for such transfer or sale, shares or other like interest in such other corporation, for the purpose or distribution amongst the members of the corporation which is being wound up or may in lieu of receiving cash, shares, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing corporation.

2. Any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the shareholders or members of the corporation which is being wound up, subject to the proviso that if any member of the corporation which is being wound up, who has not voted in favour of the resolution passed by the corporation of which he is a member, expresses his dissent from any such resolution, in writing, addressed to the liquidators or one of them, and left at the head office of the corporation, or the place where its undertaking is carried on, not later than seven days after the date of the meeting at which such resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer, that is to say, either: a) To abstain from carrying such resolution into effect, or b) To purchase the interest held by such dissentient member, at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the corporation is dissolved, and to be raised by the liquidators in such manner as may be determined by resolution.

3. No resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding-up the corporation or for appointing liquidators.

4. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement; but if the parties dispute about the same such dispute shall be settled by arbitration under the provisions of *The Arbitration Act*.

R. S. O. c. 222, § 13 (1—4); Imp. § 192.

**Appeals.** 189. The liquidator or liquidators or any creditor affected by the provisions of section 188 of this Act or the inspectors may at any time apply to the Master-in-Ordinary in the County of York or the Local Master in any other county or union of counties for his opinion, advice, or direction in any matter arising in the liquidation, and the said master may give such opinion, advice, or direction after hearing such parties as he shall direct to be notified or after such steps as he may prescribe have been taken, and such advice, opinion, or direction shall be followed and shall be binding upon all parties in the liquidation subject to an appeal to a Judge of the High Court of Justice in Chambers if leave to appeal is given by such master, and the order of such Judge of the High Court of Justice shall be final and binding in the liquidation.

8 Edw. 7, c. 43, § 1 (24).

**Winding-up by Court.** 190. A corporation may be wound up by order of the Court: 1. Where it may be wound up voluntarily; 1. Where proceedings have been taken to wind up voluntarily and it appears to the Court that it is in the interests of contributories and creditors that it should be wound up under the supervision of the Court; 3. Where on the application of a contributory the Court is of the opinion that it is just and equitable that the corporation should be wound up; 4. When the letters patent or supplementary letters patent have been declared forfeited or revoked or made void under the provisions of sections 22 or 148.

Imp. § 199.

**Who may apply.** 191. The winding-up order may be made on petition to a Judge or Local Judge of the High Court in Chambers by the liquidator or by any contributory, shareholder, member or when the corporation is being wound up voluntarily by a creditor having a claim of \$ 200 or upwards.

Imp. § 199. A shareholder who has fully paid for his shares may be a contributory so as to entitle him to initiate winding-up proceedings. — *In re Macdonald & Noxon Bros. Manufacturing Co.*, (1888), 16 O. R. 368.

**Commencement of winding-up.** 192. Where a winding-up order is made by the Court without prior voluntary winding-up proceedings, the winding-up shall be deemed to commence at the time of service of notice of motion for the order.

Imp. §§ 139, 183.

**Powers of Court.** 193. The Court may make the order applied for or may dismiss the petition with or without costs; may adjourn the hearing conditionally or

unconditionally, or may make any interim or other orders as may be just, and upon the making of the order may, according to the practice and procedure of such court, refer the proceedings for the winding-up and may also delegate any powers of the Court conferred by this Act to a Master or Referee of the Court.

Imp. § 141.

**Appointment of liquidator. 194.** The Court in making the winding-up order may appoint a liquidator or liquidators of the estate and effects of the corporation; but no such liquidator shall be appointed unless a previous notice is given to the creditors, contributories, shareholders, or members in the manner and form prescribed by the Court. Provided, however, that if a liquidator has already been appointed in a voluntary liquidation such notice need not be given.

Imp. § 202.

**Appointment by Court. Removal of liquidator. The case of no liquidator. 195.**

1. If from any cause there is no liquidator acting either provisionally or otherwise, the Court may on the application of a member of the corporation, appoint a liquidator or liquidators. 2. The Court may also on due cause shewn, remove a liquidator and appoint another liquidator. 3. When there is no liquidator the estate shall be under the control of the Court until the appointment of a new liquidator.

R. S. O. c. 222, § 25 (2—4); Imp. § 202.

**Proceeding in winding-up after order. 196.** When a winding-up order has been made proceedings for the winding-up of the corporation shall be taken in the same manner and with the like consequences as hereinbefore provided for a voluntary winding-up. Provided, however, that the list of contributories shall be settled by the Court except where the same has been settled by the liquidator prior to the winding-up order, when such list shall be subject to review by the Court, and that all proceedings in said winding-up shall be subject to the order and discretion of the Court.

Imp. § 199.

**Meetings of members of company may be ordered. Chairman. Order for delivery by contributories and others of property, etc. Inspection of books. 197.** The Court may direct meetings of the shareholders or members of the corporation to be summoned, held, and conducted in such manner as the Court thinks fit for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. 2. The Court may require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker, or agent or officer of the corporation to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the corporation is *prima facie* entitled. 3. The Court may make such order for the inspection by the creditors and contributories of the corporation of its books and papers as the Court thinks just; and any books and papers in the possession of the company may be inspected in conformity with the order of the Court, but not further or otherwise.

R. S. O. c. 222, § 23 (5, 6, 10); Imp. §§ 164, 219, 221.

**Examination of persons before Court or liquidator. Power of Court to assess damages against delinquent directors, etc. 198.** 1. The Court may, at any time after the commencement of the winding-up of the corporation, summon to appear before the Court or liquidator any officer of the corporation, or any other person known or suspected to have in his possession any of the estate or effects of the corporation, or supposed to be indebted to the corporation, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the corporation, and in case of refusal to appear and answer to questions submitted, he may be committed and punished by the Judge as for a contempt. 2. Where in the course of winding-up a corporation under this Act, it appears that any person who has taken part in the formation or promotion of the corporation or any past or present director, manager, official or other liquidator, or any officer of the corporation has misapplied, or retained in his own hands, or become liable or accountable for, moneys of the corporation, or been guilty of any misfeasance or breach of trust in relation to the corporation, the Court may, on the application of a liquidator, or of any contributory of the corporation, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct



of such promoter, director, manager, or other officer, and compel him to repay the moneys so misapplied or retained, or for which he has become liable or accountable, together with interest, at such rate as the Court thinks just, or to contribute such sums of money to the assets of the corporation by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

R. S. O. c. 222, § 23 (11, 17); Imp. §§ 174, 215. Subsection (2) is not broad enough to authorize the setting aside as a breach of trust, on the summary application of the liquidator, of a sale of land by the company through a director, or to the wife of a director at the latter's direction. — In re Essex Centre Manufacturing Co., (1890), 19 O. A. R. 125.

**Proceedings by contributories at their own expense and for their own benefit only.** 199. If at any time a member of the corporation desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the corporation, and the liquidator, under the authority of the members of the corporation or of the inspectors, refuses or neglects to take such proceeding, after being duly required so to do, the member of the corporation shall have the right to obtain an order of the Court authorizing him to take such proceeding in the name of the liquidator or corporation, but at his own expense and risk, upon such terms and conditions as to indemnity to the liquidator, as the Court may prescribe; and thereupon any benefit derived from such proceeding shall belong exclusively to the member of the corporation instituting the same, for his benefit and that of any other member of the corporation who may have joined him in causing the institution of such proceeding; but if, before such order is granted, the liquidator signifies to the Court his readiness to institute such proceeding for the benefit of the corporation, an order shall be made prescribing the time within which he shall do so and in that case the advantage derived from such proceeding shall appertain to the corporation.

R. S. O. c. 222, § 24.

**Powers of Court to be in addition to other powers.** 200. Any powers by this Act conferred on the Court shall be deemed to be in addition to any other power, of instituting proceedings against any contributory, or against any debtor of the corporation for the recovery of any call or other sums due from such contributory, or against any debtor of the corporation, for the recovery of any call or other sum due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

R. S. O. c. 222, § 28; Imp. § 177.

**Stay of proceedings.** 201. The Court at any time after an order has been made for winding-up a corporation may, upon the application by motion of any contributory, and upon proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as the Court deems fit.

R. S. O. c. 222, § 33; Imp. § 144.

**Appeals.** 202. Any party who is dissatisfied with any order or decision of the Court or of a Master or Referee in any proceeding under this Act, may appeal therefrom to a Judge of the High Court as in the case of a like order made in any action.

Imp. § 181. An order rescinding an order to wind-up is an appealable order. — In re Equitable Savings, etc., Assn., (1903), 4 O. L. R. 479; 6 O. L. R. 26; 2 O. W. R. 366. And see McNabb v. Oppenheimer, (1885), 11 O. P. R. 214.

**Rules of procedure.** 203. The Lieutenant-Governor-in-Council may from time to time make rules of practice and procedure for the due carrying out of the provisions of this part of the Act, and until such rules have been made the practice shall be the same as in cases of administration of estates so far as the same are applicable, or in the Master's Office in cases under the *Winding-up Act (Canada)*.

Imp. §§ 237, 238.

**Account of winding-up to be made by liquidator to a general meeting. Return of holding of meeting to be sent to Provincial Secretary. Dissolution of company.**

204. 1. As soon as the affairs of the corporation are fully wound up, the liquidators shall make up an account shewing the manner in which the winding-up has been conducted, and the property of the corporation disposed of; and thereupon they shall call a general meeting of the members or shareholders of the corporation for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators; the meeting shall be called in the manner provided by the by-laws for calling general meetings of the shareholders or members of the corporation. 2. The liquidator shall make a return to the Provincial Se-

cretary of such meeting having been held, and of the date at which the same was held; which return shall be filed in the office of the Provincial Secretary; and on the expiration of three months from the date of the filing of such return, the corporation shall be deemed to be dissolved.

R. S. O. c. 222 § 40; Imp. § 195.

**Order for dissolution. Report to Provincial Secretary. 205.** Whenever the affairs of the corporation have been completely wound up, the Court may make an order that the corporation be dissolved from the date of such order, and the corporation shall be dissolved accordingly; which order shall be reported by the liquidator to the Provincial Secretary.

R. S. O. c. 222, § 41; Imp. § 172 (1, 2).

**Penalty on default in reporting by liquidator or in making return. 206.** [As amended by 8 Edw. 7, c. 43, § 1 (25).] If the liquidator makes default in transmitting to the Provincial Secretary the return mentioned in section 204 (2), or in reporting the order (if any) declaring the corporation dissolved, he shall be liable on summary conviction to a penalty not exceeding \$ 20 for every day during which he is in default.

R. S. O. c. 222, § 42.

**Disposition of unclaimed dividends. 207.** All dividends deposited in a bank and remaining unclaimed at the time of the dissolution of the corporation, shall be left for three years in the bank where they are deposited, and if still unclaimed, shall then be paid over by such bank, with interest accrued thereon, to the Treasurer of Ontario, and, if afterwards duly claimed, shall be paid over by the Treasurer to the person entitled thereto.

R. S. O. c. 222, § 43; Imp. § 224.

**Deposit by liquidator after dissolution of moneys with sworn statement. Penalty on omission. Money to remain on deposit for three years. Disposal of books, etc., after winding-up. After five years responsibility as to custody of books, etc., to cease. 208.** 1. Every liquidator shall, within thirty days after the date of the dissolution of the corporation, deposit in the bank appointed or named as hereinbefore provided for any other moneys belonging to the estate then in his hands not required for any other purpose authorized by this Act, with a sworn statement and account of such money, and that the same is all he has in his hands; and he shall be liable on summary conviction to a penalty of not exceeding \$ 10 for every day on which he neglects or delays such payments; and he shall be a debtor to His Majesty for such money and may be compelled as such to account for and pay over the same. 2. The money so deposited shall be left for three years in the bank, and shall be then paid over, with interest, to the Treasurer of the Province, and if afterwards claimed shall be paid over to the person entitled thereto. 3. Where a corporation has been wound up under this Act and is about to be dissolved, the books, accounts, and documents of the corporation and of the liquidators may be disposed of in such a way as the corporation by resolution directs in case of voluntary winding-up or the Court in case of winding-up under order. 4. After the lapse of five years from the date of such dissolution, no responsibility shall rest on the corporation or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them are not forthcoming to any party claiming to be interested therein.

R. S. O. c. 222, § 44; Imp. §§ 222, 224.

### *Part XV. Application of Act and Repeal.*

**Powers of existing corporations may be varied. 209.** The Lieutenant-Governor-in-Council may by supplementary letters patent upon the application of a corporation, a shareholder, a creditor, a holder of bonds, debentures, or other securities or obligations thereof, or any person, firm, or corporation with whom the company may have dealings, relieve the corporation from any duty, obligation, or other disability, or may limit any right, power, or other advantage which may have been cast or conferred upon the corporation by the repeal of the general Act under which the said corporation was incorporated and by the enactment of this Act. Notice shall thereupon be given in the *Gazette* by the Provincial Secretary of such supplementary letters patent setting out the manner in which any such duty, obligation, or other disability has been relieved or in which such right, power, or other advantage has been limited.



**Repeal. Proviso. 211.** The Acts mentioned in Schedule E to this Act are hereby repealed to the extent specified in the third column of that Schedule; provided, that: 1. Any letters patent, supplementary letters patent, Order-in-Council, certificate, by-law, rule, or regulation made or granted with respect to any company, corporation, or association within the scope of this Act under any enactment hereby repealed, shall continue in force as if it had been made or granted under this Act; 2. The corporate existence and powers of all companies, associations, or other corporations within the scope of this Act incorporated otherwise than by letters patent under any enactment hereby repealed shall continue as if such companies, associations, or other corporations had been incorporated under this Act; 3. The corporate existence, rights and powers of any and all corporations, associations and societies, registered as friendly societies, and incorporated under any Act respecting benevolent, provident and other societies, or any other Act of this Province, and all the rights and privileges of the members thereof and their beneficiaries are (subject to the provisions of *The Ontario Insurance Act* and all amendments thereto) hereby continued notwithstanding the repeal of any Act hereunder, and notwithstanding anything in this Act hereinbefore contained; 4. Saving and excepting those corporations referred to in subsection 3 hereof, any document referring to any Act or enactment hereby repealed shall be construed to refer to this Act or to the corresponding enactment of this Act. 5. Any penalty may be recovered and any offence may be prosecuted under this Act for any matter or thing provided for under the Acts hereby repealed.

**Commencement of Act. 212.** This Act shall, except as otherwise expressed, come into operation on the first day of July, one thousand nine hundred and seven.

2. Your petitioners have satisfied themselves and are assured that the corporate name under which incorporation is sought is not on any public ground objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

3. Your petitioners have satisfied themselves and are assured that no public or private interest will be prejudicially affected by the incorporation of your petitioners as aforesaid.
4. Your petitioners are of the full age of twenty-one years.
5. The object for which incorporation as aforesaid is sought by your petitioners is to .....
6. The head office of the Company will be at .....
7. The amount of the capital stock of the Company is to be ..... dollars.
8. The said stock is to be divided into ..... shares of ..... dollars each.
9. The said .....
- are to be provisional directors of the Company.

10. By subscribing therefor in a Memorandum of Agreement, duly executed in duplicate, with a view to the incorporation of the Company, your petitioners have taken the amount of stock set opposite their respective names, as follows:

Petitioners.	Amount of stock subscribed for.
.....	\$ .....
.....	\$ .....
.....	\$ .....
.....	\$ .....

Your Petitioners therefore pray that Your Honour may be pleased by Letters Patent under the Great Seal to grant a Charter to your petitioners constituting your petitioners and such others as have or may become subscribers to the Memorandum of Agreement and stock-book of the Company thereby created, a body corporate and politic for the due carrying out of the undertaking aforesaid.

And your petitioners, as in duty bound, will ever pray.

Signature of witnesses.	.....	.....	Signature of petitioners.
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Dated at ..... this ..... day of ..... 19

Schedule B.

(To be executed in duplicate; one duplicate to be deposited in the office of the Provincial Secretary.)

The ..... Company of ..... (Limited).

Memorandum of Agreement and stock-book.

We the undersigned do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of *The Ontario Companies Act* under the name of The ..... Company of ..... (Limited), or such other name as the Lieutenant-Governor may give to the Company, with a capital of ..... dollars, divided into ..... shares of ..... dollars each.

And we do hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said Company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such Company to the said amounts.

In witness whereof we have signed.

Name of subscriber.	Seal.	Amount of sub- scription.	Date and place of subscription.	Residence of subscriber.	Name of witness.
			Date.	Place.	



Schedule C.  
Petition.

To His Honour ..... etc., etc., etc.

Lieutenant-Governor of the Province of Ontario:

The Petition of .....  
.....  
.....  
.....  
..... Humbly sheweth as follows:

1. Your petitioners are desirous of obtaining by Letters Patent, under the Great Seal, a charter, under the provisions of *The Ontario Companies Act*, constituting your petitioners and such others as may become members of the corporation thereby created, a body corporate and politic without share capital under the name of ..... or such other name as shall appear to Your Honour to be proper in the premises.

2. Your petitioners have satisfied themselves and are assured that the corporate name under which incorporation is sought is not on any public ground objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

4. Your petitioners have satisfied themselves and are assured that no public or private interest will be prejudicially affected by the incorporation of your petitioners as aforesaid.

4. Your petitioners are of the full age of twenty-one years.

5. The object for which incorporation as aforesaid is sought by your petitioners is to .....  
.....  
.....

6. The said .....  
..... are to be the provisional directors of the Corporation.

7. Your petitioners have subscribed to a memorandum of agreement in duplicate, setting out the purposes and objects of incorporation and provisions for administering the affairs of the Corporation, and have undertaken that the said Corporation shall be carried on without the purpose of gain for its members, and that any profits or other accretions to the Corporation shall be used in promoting its objects.

Your Petitioners therefore pray that Your Honour may be pleased by Letters Patent under the Great Seal to grant a Charter to your petitioners constituting your petitioners and such others as have or may become subscribers to the Memorandum of Agreement of the Corporation thereby created, a body corporate and politic for the due carrying out of the undertaking aforesaid.  
And your petitioners, as in duty bound, will ever pray.

Signature of witnesses.	.....	.....
	.....	.....
	.....	.....
	.....	.....
	.....	.....
	.....	.....

Dated at ..... this ..... day of ..... 19 .

Schedule D.

Memorandum of Agreement of the Association, made and entered into this ..... day of ..... 19 .

1. We, the undersigned, do hereby severally covenant and agree each with the other to become incorporated under the provisions of *The Ontario Companies Act* as a corporation without share capital for the purposes and objects following:

2. The subscribers shall be the first members, and it shall rest with the directors to determine the terms and conditions on which subsequent members shall from time to time be admitted.

3. The following shall be the first directors of the corporation:

4. Any member may transfer his interest in the corporation by instrument in writing, signed both by the transferor and transferee and duly registered with the corporation.

5. The first general meeting shall be held at such time, not being more than two months after the incorporation of the corporation, and at such place as the directors may determine.

6. Subsequent general meetings shall be held at such time and place as may be prescribed by the corporation in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the fourth Wednesday in January in every year, at such place as may be determined by the directors.

7. The directors may, whenever they think fit, and they shall upon a requisition made in writing by any five or more members, convene a general meeting.

8. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the office of the corporation.

9. Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members may themselves convene a meeting.

10. Ten days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business shall be given to the members in the manners hereinafter mentioned, or in such other manner, if any, as may be prescribed by the corporation in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

11. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the following week, at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

12. The chairman (if any) of the directors shall preside as chairman at every general meeting of the corporation. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman at such meeting.

13. The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

14. At any general meeting, unless a poll is demanded, a declaration by the chairman that a resolution has been carried and an entry to that effect in the minutes of proceedings of the corporation, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

15. If a poll is demanded, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the corporation in general meeting.

16. With the consent in writing of all members, a general meeting may be convened on shorter notice than seven days, and in any manner which such members think fit.

17. The quorum of a general meeting shall be . . . . . members present in person.

18. Until otherwise determined by special resolution, every member shall have one vote.

19. Votes may be given either personally or by proxy. The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under its common seal, and shall be attested by one or more witness or witnesses; no person shall be appointed a proxy who is not a member of the corporation.

20. A resolution signed by all the directors shall be as valid and effectual as if had been passed at a general meeting of the directors duly called and constituted.

21. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the corporation in general meeting.

22. The affairs of the corporation shall be managed by the directors, who may pay all expenses incurred in incorporating the corporation, and may exercise all such powers of the corporation as are not by the foregoing Act, or by these articles, required to be exercised by the corporation in general meeting, subject, nevertheless, to any regulations of this memorandum, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the corporation in general meeting; but no regulation made by the corporation in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made. The continuing directors may act notwithstanding any vacancy in their body.

23. The office of director shall be vacated: a) If he holds any other office or place of profit under the corporation; b) If he is concerned in or participates in the profits of any contract with the corporation. But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a shareholder of any corporation which has entered into contracts with or done any work for the corporation of which he is a director; nevertheless, he shall not vote in respect of such contract of work, and if he does so vote his vote shall not be counted, and no addition thereto, a director shall vacate his office if and when he is requested by the corporation in general meeting to resign.

24. A retiring director shall be re-eligible. The corporation at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

25. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating



directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

26. The corporation may, from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation any such increased or reduced number is to go out of office.

27. Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

28. The corporation in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may, by an ordinary resolution, appoint another person in his stead; the person so appointed shall hold office during such time only as the director in whose place he was appointed would have held the same if he had not been removed.

29. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

30. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

31. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of their powers so delegated, conform to any regulations that may be imposed on them by the directors.

32. A committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

33. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

34. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they, or any of them, were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director, but it shall not be necessary to give notice of a meeting of the directors to a director who is not within the Province. In testimony whereof we have hereunto set our hand and affixed our seals.

#### *Schedule E.*

##### *Repeal.*

Session and Chapter.	Short Title.	Extent of Repeal.
Revised Statutes of Ontario, Cap. 191.	The Ontario Companies Act.	The whole Act.
The Revised Statutes of Ontario, Cap. 194.	The Timber Slides Companies Act.	Sec. 1—17, 20—35 and 60, 62, 63, 64.
Revised Statutes of Ontario, Cap. 195.	An Act respecting Joint Stock Companies for the construction of Piers, Wharfs, Dry Docks and Harbors.	Sec. 1—7, 12—14.
Revised Statutes of Ontario, Cap. 196.	An Act respecting Joint Stock Companies for the erection of Exhibition Buildings.	Sec. 1—3, 5—7.
Revised Statutes of Ontario, Cap. 197.	The Mining Companies Incorporation Act.	The whole Act.
Revised Statutes of Ontario, Cap. 199.	An Act respecting Joint Stock Companies for supplying Cities, Towns and Villages with Gas and Water.	Sec. 1—11, 14—17, 20—43, 55—58.
Revised Statutes of Ontario, Cap. 200.	An Act respecting Companies for supplying Steam, Heat, Electricity or Natural Gas for Heat, Light or Power.	Sec. 1—3, 5—8.
Revised Statutes of Ontario, Cap. 201.	An Act respecting Cheese and Butter Manufacturing Associations and Companies.	The whole Act.
Revised Statutes of Ontario, Cap. 202.	An Act respecting Co-operative Associations.	The whole Act.

Session and Chapter.	Short Title.	Extent of Repeal.
Revised Statutes of Ontario, Cap. 206.	The Ontario Trust Companies Act.	The whole Act.
Revised Statutes of Ontario, Cap. 211.	An Act respecting Benevolent, Provident and other Societies.	The whole Act.
Revised Statutes of Ontario, Cap. 213.	An Act respecting Cemetery Companies.	Sec. 1—2, s. s. 1—3, 14—20 <sup>1)</sup> , 25, 26, 30.
Revised Statutes of Ontario, Cap. 215.	An Act respecting the changing of the names of incorporated Companies.	The whole Act.
Revised Statutes of Ontario, Cap. 216.	The Directors' Liability Act.	The whole Act.
Revised Statutes of Ontario, Cap. 217.	An Act to prevent fraudulent statements by Companies and others.	The whole Act.
Revised Statutes of Ontario, Cap. 218.	An Act respecting Fees payable by Incorporated Companies and other Bodies.	The whole Act.
Revised Statutes of Ontario, Cap. 219.	An Act respecting Returns required from Incorporated Companies.	The whole Act.
Revised Statutes of Ontario, Cap. 221.	An Act respecting Investments by Corporations.	The whole Act.
Revised Statutes of Ontario, Cap. 222.	The Joint Stock Companies Winding-up Act.	The whole Act.
61 Vic. Cap. 19.	An Act to amend the Ontario Companies Act.	The whole Act.
61 Vic. Cap. 20.	An Act to amend the Timber Slides Companies Act.	The whole Act.
62 Vic. (2), Cap. 11.	An Act to amend the Statute Law.	Sec. 19, 20 and 21.
63 Vic. Cap. 23.	An Act to amend the Ontario Companies Act.	The whole Act.
63 Vic. Cap. 26.	An Act to provide for the incorporation of Co-operative Cold Storage Associations.	Sec. 1—16, Schedule A.
1 Edw. VII. Cap. 18.	An Act to amend the Ontario Companies Act.	The whole Act.
2 Edw. VII. Cap. 24.	An Act to amend the Ontario Companies Act.	The whole Act.
3 Edw. VII. Cap. 7.	The Statute Law Amendment Act, 1903.	Sec. 34, 35, 36.
4 Edw. VII. Cap. 11.	The Statute Law Amendment Act, 1904.	Sec. 45, 46, 47, 48.

**b) 8 Edw. 7, c. 43. An Act to amend the Ontario Companies Act (14th April, 1908).**

[1. Amends various sections of 7 Edw. 7, c. 34. These amendments are incorporated in the text of the principal Act.]

[2. Adds a new section, § 153 A to the principal Act.]

**c) 10 Edw. 7, c. 80. An Act to amend the Ontario Companies Act (19th March, 1910).**

[1—2. Amend various sections of the principal Act, and are there incorporated.]

**d) 63 Vic. c. 24. An Act respecting the Licensing of Extra Provincial Corporations (30th April, 1900).**

**Extra provincial corporations, meaning of.** 1. In this Act the expression "Extra provincial corporation" means a corporation created otherwise than by or under the authority of an Act of the Legislature of Ontario.

63 Vic. c. 24, § 1.

<sup>1)</sup> §§ 14—20 are revived by Act 10 Edw. 7, c. 26, § 42.



**Corporations which do not require license. 2.** [As amended by 1 Edw. 7, c. 19, § 1.]

Extra provincial corporations of the classes mentioned in this section are not required to take out a license under this Act, viz., corporations created by or under the authority of: Class I. An Act of the Legislature of the late Province of Upper Canada, or by Royal Charter of the Government of that Province; Class II. An Act of the Legislature of the late Province of Canada, or by Royal Charter of the Government of that Province, and carrying on business in Ontario at the date of the commencement of this Act; Class III. Corporations which have before the commencement of this Act received from the Government of Ontario a license to carry on business in Ontario, or which have been authorized by Act of the Legislature of Ontario to carry on business in Ontario, provided that such license or Act is in force at the date of the commencement of this Act; Class IV. Corporations now or hereafter licensed or registered under the provisions of *The Ontario Insurance Act*, or of *The Loan Corporations Act*; Class V. Corporations liable to payment of taxes imposed by Chapter 8 of the Ontario Statutes for 1899, intitled *An Act to supplement the revenues of the Crown in the Province of Ontario*; or by chapter 31 of the said Statutes for 1899, intitled *An Act respecting Brewers' and Distillers' and other Licenses*; Class VI. Corporations not having gain for any of their objects.

63 Vic. c. 24, § 2; 1 Edw. 7, c. 19, § 1.

**Corporations which require license. 3.** Extra provincial corporations of the classes mentioned in this section are required to take out a license under this Act, viz., corporations (other than those mentioned in section 2) created by or under the authority of: Class VII. An Act of the Legislature of the late Province of Canada or by Royal Charter of the Government of that Province, authorized to carry on business in Upper Canada, but not carrying on business in Ontario at the date of the commencement of this Act; Class VIII. An Act of the Dominion of Canada, and authorized to carry on business in Ontario; Class IX. Corporation not coming within any of the foregoing classes.

**Right to license when within VII. or VIII. 4.** A corporation coming within Class VII. or VIII. shall, upon complying with the provisions of this Act and the regulations made hereunder, receive a license to carry on its business and exercise its powers in Ontario.

**Right to license when within IX. 5.** A corporation coming within Class IX. may, upon complying with the provisions of this Act and the regulations made hereunder, receive a license to carry on the whole or such parts of its business and exercise the whole or such parts of its powers in Ontario as may be embraced in the license; subject, however, to such limitations and conditions as may be specified therein.

Where the agent of plaintiff, a foreign corporation not licensed to do business in Ontario, sold engines to defendant, it was held that the agent was a representative of an extra provincial corporation, within the meaning of this Act, and, since it had taken out no license, it could not maintain the action. — *Bessemer Gas Engine Co. v. Mills*, (1904), 8 O. L. R. 647; see also *Kerlin Bros. v. Ontario Pipe Line Co.*, (1908), 11 O. W. R. 797. In *International Text Book Co. v. Brown*, (1906), 13 O. L. R. 644, it appeared that the plaintiffs were incorporated in the State of Pennsylvania for the purpose of giving, by correspondence, various forms of instruction. The company had offices in Toronto and text books were sent from the head office to Toronto and afterwards forwarded to students. Held, that plaintiffs were carrying on business in Ontario within the meaning of this Act so as to necessitate their taking out a license, and their omission to do so precluded them from maintaining an action for money claimed to be due from one of the enrolled students. *Cp. International Text-Book Co. v. Pigg*, (1910), 30 U. S. Sup. Ct. Rep. 481. In *Halifax v. Jones*, (1896), 28 N. S. 452, defendants were agents of a steamship company incorporated in England with a head office at Liverpool and carried on business at Halifax through their agents. It was held that as the company carried on business in Halifax they were liable to be taxed the license fee imposed on companies doing business in Nova Scotia.; but *cp.* the above cases with *Standard Sanitary Manufacturing Co. v. Standard, etc., Co.*, (1910), Q. R. 37 S. C. 33 where it was held that a foreign company, though of the class described as "Extra Provincial Corporations" in 4 Edw. 7, c. 34, and though it had not been granted a license to do business, was not debarred from exercising its rights and for redressing its wrongs under the law. The consequence of its failure to comply with the provisions of the statute is confined to the incurring of the penalty therein provided. *Quære*, whether companies incorporated by the Dominion Parliament have a different status from strictly foreign companies in regard to their rights to carry on business within the limits of a Province of the Dominion. § 3, *supra* would seem clearly to include companies incorporated under the Dominion Act. However, Masten submits that "where companies are incorporated by a foreign jurisdiction, prohibition against the exercise of any corporate power until a license had been obtained and a fee paid would doubtless be considered as a

reasonable exercise of sovereignty. But companies incorporated by the Dominion have rights which the Dominion can confer, and as long as the powers they exercise are those which the Dominion alone can authorize, the Province can not prevent their doing business." — *Company Law*, p. 335. Parker and Clark accord with this view. — *Company Law*, p. 326. Both writers submit cases touching the constitutionality of this provision, but it is submitted the cases are not directly in point. Later cases decided in jurisdictions other than Ontario seem not to doubt the constitutionality of this section as applied to Dominion companies. In *Rex v. Massey*, (1908), 6 Terr. L. R. 26, where the statute under which the case was decided clearly included Dominion companies, it was held that the statute was *intra vires* the Territorial Legislature and extended to companies incorporated by the Dominion to carry on, throughout Canada, a business which the Territorial Legislature might have authorized it to carry on in the Territories. Where the plaintiff, incorporated under the Dominion Companies Act, but not licensed in British Columbia, attempted to bring suit on a contract entered into in British Columbia, it was held that the securing of a license was a pre-requisite to doing business and bringing suit in British Columbia. It was held further, that § 123 of the British Columbia Companies Act of 1897 requiring such a license was not in conflict with the Dominion Companies Act and was not *ultra vires* the power of the Provincial Legislature. The Dominion Act gives a company the "capacity or status to carry on certain business throughout Canada consistently with the laws of that particular Province in which it seeks to extend its operations." — *Per Morrison, J.*, in *Waterous Engine Works Co. v. Okanagan Lumber Co.*, (1908), 14 B. C. R. 328. See also articles in *Canadian Law Times*, Vol. 30, pp. 705—721, and *Canada Law Journal*, Vol. 46, pp. 513—523.

**Carrying on business without license prohibited.** 6. [As amended by 1 Edw. 7, c. 19, § 2.] No extra provincial corporation coming within Class VII. or VIII. or IX. shall carry on within Ontario any of its business unless or until a license under this Act so to do has been granted to it, and unless such license is in force; and no company, firm, broker, agent, or other person shall, as the representative or agent of or acting in any other capacity for any such extra provincial corporation, carry on any of its business in Ontario unless and until such corporation has received such license and unless such license is in force. Provided that taking orders for or buying or selling goods, wares, or merchandise by travellers or by correspondence, if the corporation has no resident agent or representative or no office or place of business in Ontario, shall not be deemed a carrying on of business within the meaning of this Act. Provided further that this section shall not apply until the first day of November, A. D. 1900, to any such corporation which at the date of the commencement of this Act is carrying on business in Ontario. Provided also that the onus of proving that a corporation has no resident agent or representative and no office or place of business in Ontario, or that it was at the date of the commencement of this Act carrying on business in Ontario, shall in any prosecution for an offence against this section rest upon the accused.

**Application for license.** 7. [As amended by 1 Edw. 7, c. 19, § 3.] An extra provincial corporation coming within Class VII. or VIII. or IX. may apply to the Lieutenant-Governor-in-Council for a license to carry on its business or part thereof, and exercise its powers or part thereof in Ontario; and upon the granting of such license such corporation may thereafter while such license is in force carry on in Ontario the whole or such parts of its business and exercise in Ontario the whole or such parts of its powers as may be embraced in the license; subject however to the provisions of this Act and to such limitations and conditions as may be specified in the license. Provided always that no limitations or conditions shall be included in any such license which could limit the rights of a corporation coming within Class VII. or Class VIII., to carry on in Ontario all such parts of its business, and to exercise in Ontario all such parts of its powers as by its Act or charter of incorporation it may be authorized to carry on and exercise therein.

**Regulations by Order-in-Council. Special Orders-in-Council.** 8. The Lieutenant-Governor-in-Council may from time to time make regulations respecting the following matters namely: a) The evidence required, upon the application for a license under this Act, respecting the creation of the corporation applying and its powers and objects and its existence as a valid and subsisting corporation; b) The appointment and continuance by the corporation of a person or company as its representative in Ontario on whom service of process, notice, or other proceedings may be made, and the powers to be conferred on such representative; c) The forms of licenses, powers of attorney, applications, notices, statements, returns, and other documents relating to applications and other proceedings under this Act; and such regulations shall be published in *The Ontario Gazette*. The Lieutenant-Governor-in-Council may make orders with respect to particular cases where the general



regulations may not be applicable or where they would cause unnecessary inconvenience or delay.

**Proof to be furnished on application for license.** 9. Upon the application for a license the applicant shall establish to the satisfaction of the Provincial Secretary, or such other officer as may be charged by him to report thereon, that the provisions of this Act and the regulations made hereunder have been complied with; and the Provincial Secretary, the Assistant Provincial Secretary, or such other officer may for the purposes aforesaid or for any other purpose under this Act take any requisite evidence in writing under oath or affirmation. Proof of any matter which may be necessary to be made under this Act may be made by statutory declaration or by affidavit or by deposition before the Provincial Secretary, or Assistant Provincial Secretary or other officer as aforesaid or before any Justice of the Peace or commissioner for taking affidavits, or notary public, who for this purpose are hereby authorized and empowered to administer oaths or to take affirmations. Or if made outside of Ontario may be made before any person authorized to take affidavits under *The Registry Act*.

**Dealing with real estate.** 10. A corporation receiving a license under this Act may, subject to the limitations and conditions of the license, and subject to the provisions of its own charter, Act of Incorporation or other creating instrument, acquire, hold, mortgage, alienate, and otherwise dispose of real estate in Ontario and any interest therein to the same extent and for the same purposes and subject to the same conditions and limitations as if such corporation had been incorporated under *The Ontario Companies Act* with power to carry on the business and exercise the powers embraced in the license.

**Notice of granting license.** 11. Notice of the granting of a license under this Act shall be given by the Provincial Secretary in *The Ontario Gazette* and a copy of such *Gazette* containing such notice shall be prima facie evidence, in all proceedings by and against the corporation and otherwise under this Act or otherwise, of the granting of the license and of the terms thereof mentioned in the notice; and a copy of the license certified by the Provincial Secretary or Assistant Provincial Secretary shall be sufficient evidence of the license before all courts and tribunals.

**Return to be made by licensees.** 12. A corporation receiving a license under this Act shall on or before the eighth day of February in every year during the continuance of the license, make and transmit to the Provincial Secretary a statement, under oath and according to a form approved of by the Lieutenant-Governor-in-Council, containing information similar to that required under section 131 of *The Ontario Companies Act*, or so much thereof or such additional information as may be prescribed in such form, and the Lieutenant-Governor-in-Council may at any time require the corporation to supply such further and other information as shall seem to him to be reasonable and proper.

**Suspension, cancellation, or restoration of license after default of licensee. Notice.** 13. If a corporation receiving a license under this Act makes default in observing or complying with the limitations and conditions of such license, or the provisions of section 12 of this Act, or the regulations respecting the appointment and continuance of a representative in Ontario, the Lieutenant-Governor-in-Council may suspend or revoke such license in whole or in part, and may remove such suspension or cancel such revocation and restore such license. Notice of such suspension, revocation, removal, or restoration shall be given by the Provincial Secretary in *The Ontario Gazette*.

**Penalty for carrying on business without a license. Proviso.** 14. If any extra provincial corporation coming within Class VII. or VIII. or IX. shall, contrary to the provisions of section 6 hereof, carry on in Ontario any part of its business, such corporation shall incur a penalty of fifty dollars for every day upon which it so carries on business; and so long as it remains unlicensed under this Act it shall not be capable of maintaining any action, suit, or other proceeding in any Court in Ontario in respect of any contract made in whole or in part within Ontario in the course of or in connection with business carried on contrary to the provisions of said section 6. Provided, however, that upon the granting or restoration of the license, or the removal of any suspension thereof, such action, suit, or other proceeding may be maintained as if such license had been granted or restored or such suspension had been removed before the institution thereof.

**Penalty for agent of unlicensed corporation carrying on business. 15.** If any company, firm, broker, agent, or other person shall, contrary to the provisions of section 6 hereof, as the representative or agent of or acting in any other capacity for an extra provincial corporation, carry on any of its business in Ontario such company, firm, broker, agent, or other person shall incur a penalty of twenty dollars for every day upon which it, he, or they carry on such business.

**Power to remit penalties or costs. 16.** The Lieutenant-Governor-in-Council may, when or after granting a license, remit in whole or part any penalty incurred under this Act by the corporation receiving the license or by any representative or agent thereof, and may also remit in whole or in part the costs of any action or proceeding commenced for the recovery of any such penalty, and thereupon the whole or such part of the costs as the case may be, shall not be recoverable.

**Penalties, how recoverable. 17.** The penalties imposed by this Act shall be recoverable only by action at the suit of or brought with the written consent of the Attorney-General of Ontario, and any action or proceeding to recover any such penalty shall be commenced within six months after the liability for such penalty has been incurred, and not afterwards.

**Fees on license and returns. Fees to be paid by companies on filing statements. 18.** [As amended by 3 Edw. 7, c. 7, § 53.] There shall be paid to His Majesty for the public uses of Ontario by every corporation requiring a license under this Act such fees as may from time to time be approved of by the Lieutenant-Governor-in-Council. There shall be paid to His Majesty for the public uses of Ontario, upon transmitting to the Provincial Secretary the statement required by section 12 hereof the fee of five dollars, if the capital stock of the company does not exceed the sum of one hundred thousand dollars, and a fee of ten dollars if the capital stock of the company exceeds the said sum of one hundred thousand dollars, and until such fee has been paid such statement shall be deemed not to have been made and transmitted as required by said section.

**Fees payable by extra provincial corporations. 18 A.** The fees payable by extra provincial corporations coming within Class III. of section 2 of chapter 24 of the Acts passed in the 63rd year of the reign of Her late Majesty Queen Victoria, intituled An Act respecting the licensing of Extra Provincial Corporations, for filing the annual statement or return required of such corporations shall be as follows, viz.: \$ 5 if the capital stock of the company does not exceed \$ 100,000, and \$ 10 if it does exceed \$ 100,000.

**Granting license as to real estate to other corporations. 19.** An extra provincial corporation which is not required by this Act to take out a license may apply for and receive a license authorizing it, subject to the limitations and conditions of the license, and subject to the provisions of its own charter, Act of incorporation or other creating instrument, to acquire, hold, mortgage, alienate, and otherwise dispose of real estate in Ontario and any interest therein to the same extent and for the same purposes and subject to the same conditions and limitations as if such corporation had been incorporated under *The Ontario Companies Act* with power to carry on the business or exercise the powers embraced in the license. For such license there shall be paid to His Majesty for the public uses of Ontario such fee as the Lieutenant-Governor may prescribe, and compliance with section 12 hereof may be dispensed with by the Lieutenant-Governor in whole or in part.

**Annual return as to licenses issued. 20.** A statement showing the licenses issued under this Act during the preceding calendar year and the authorized capital stocks of the companies licensed and the fee paid for each license shall be laid the Legislature at each session thereof.

**Notice of passing of Act. 21.** Notice of the passing of this Act in such form and with such particulars thereof as the Provincial Secretary may think proper shall be published by him in *The Ontario Gazette* and in *The Canada Gazette* and in the official gazette or other official publication of each Province of Canada, for such time as to him may seem best.

**Commencement of Act. 22.** This Act shall commence and take effect on and after the first day of July, A. D. 1900, and on and after that day section 107 of *The Ontario Companies Act* shall be and the same is hereby repealed.

[Schedules A and B. repealed by 3 Edw. VII. c. 7, s. 53 (2).]



**e) 1 Edw. 7, c. 19. An Act to amend an Act respecting the Licensing of Extra Provincial Corporations (15th April, 1901).**

[1. Amends 63 Vic. c. 24, § 2, and is there incorporated.] 2. The amendment made by this section shall take effect as if it originally formed part of the said clause.

[2. Amends 63 Vic. c. 24, § 6, and is there incorporated.]

[3. Amends 63 Vic. c. 24, § 7, and is there incorporated.]

**Factors.**

**10 Edw. 7, c. 66. An Act respecting Contracts in relation to Goods in the Possession of Agents and others (19th March, 1910).<sup>1)</sup>**

**Short title.** 1. This Act may be cited as *The Factors Act*.

**Interpretation.** 2. In this Act: a) "Document of title" shall include any bill of lading and warehouse receipt, as defined by *The Mercantile Law Amendment Act*, any warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented; b) "Goods" shall include wares and merchandise; c) "Mercantile agent" shall mean a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods; d) "Pledge" shall include any contract pledging or giving a lien or security on goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability. 2. A person shall be deemed to be in possession of goods or of the documents of title to goods where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf.

Imp. § 17. As to facts showing the existence of the relation of principal and factor, instead of that of pledgor and pledgee, see *Mitchell v. Sykes*, (1883), 4 O. R. 501.

*Dispositions by mercantile agents.*

**Powers of mercantile agent as to disposition of goods. Revocation of consent. Derivative documents. Presumption.** 3. 1. Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time thereof notice that the person making the disposition has not authority to make the same. 2. Where a mercantile agent has, with the consent of the owner, been in possession of goods or of documents of title to goods, any sale, pledge, or other disposition which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent; provided that the person taking under the disposition acts in good faith and has not at the time thereof notice that the consent has been determined. 3. Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner. 4. For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary.

Imp. § 2. Where a person by a representation that he had a customer for a piano induced a piano manufacturer to consign to him at a certain place a piano on condition that he should sell the same on commission, and then shipped the same to another place where he pledged it under an

<sup>1)</sup> The references in the notes (Imp.) are to the *Imperial Factors Act*, 1889, (52 & 53 Vic. c. 45).

assumed name, it was held that he was not a factor within the meaning of this Act, so as to enable him to pledge the piano. — *Bush v. Fry*, (1887), 15 O. R. 122. A partner entrusted with the possession of the goods of his firm for the purpose of sale may, either in his capacity as a partner or as a factor, pledge the same for advances made to him personally. — *Dingwall v. McBean*, (1900), 30 S. C. R. 441. In order to constitute a person a factor within the meaning of this Act it is necessary that he be entrusted with the possession of the goods as agent in a mercantile transaction. Where he obtains possession of the goods without the authority of the owner, or of a person authorized to act for the owner, he can not transfer title. — *Moshier v. Keenan*, (1900), 31 O. R. 658.

**Effect of pledge of documents of title. 4.** A pledge by a mercantile agent of the documents of title to goods shall be deemed to be a pledge of the goods.

Imp. § 3.

**Pledge for antecedent debt. 5.** Where a mercantile agent pledges goods as security for a debt due from or liability incurred by the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

Imp. § 4.

**Rights acquired by exchange of goods or documents. 6.** The consideration necessary for the validity of a sale, pledge, or other disposition of goods by a mercantile agent, in pursuance of this Act, may be either a payment in cash, or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security or of other valuable consideration, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, document, security, or other valuable consideration when so delivered or transferred in exchange.

Imp. § 5.

**Agreements through clerks, etc. 7.** For the purposes of this Act an agreement made with a mercantile agent through a clerk or other person authorized in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent.

Imp. § 6.

**Provisions as to consignors and consignees. 8. 1.** Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made in good faith to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person. **2.** Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition by a mercantile agent.

Imp. § 7.

*Disposition by sellers and buyers of goods.*

**Disposition by seller remaining in possession. 9.** Where a person having sold goods continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

Imp. § 8.

**Disposition by buyer retaining possession. Exception as to contracts under The Conditional Sales Act. 10. 1.** Where a person, having bought or agreed to buy goods, obtains with the consent of the seller possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner. **2.** This section shall not apply to goods the possession of which are obtained under a contract



coming within the meaning of *The Conditional Sales Act* where the seller has complied with the provisions of that Act.

Imp. § 9.

**Effect of subsale or pledge by buyer. 11.** Subject to the provisions of this Act the unpaid seller's right of lien or retention or stoppage in transitu shall not be affected by any sale or other disposition of the goods which the buyer may have made unless the seller has assented thereto; Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods and that person transfers the document to a person who takes the same in good faith and for valuable consideration, then if such last mentioned transfer was by way of sale the unpaid seller's right of lien or retention or stoppage in transitu shall be defeated; and if such last mentioned transfer was by way of pledge or other disposition for value the unpaid seller's right of lien or retention or stoppage in transitu can only be exercised subject to the rights of the transferee.

Imp. 56 & 57 Vic. c. 71, § 47.

*Supplemental.*

**Mode of transferring documents. 12.** For the purposes of this Act the transfer of a document of title may be by endorsement, or where the document is by custom or by its express terms, transferable by delivery, or makes the goods deliverable to the bearer, then by delivery.

Imp. § 11.

**Saving for rights of true owner. 13.** 1. Nothing in this Act shall authorize an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability for so doing. 2. Nothing in this Act shall prevent the owner of goods from recovering them from his agent at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof, on satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien. 3. Nothing in this Act shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set off on the part of the buyer against the agent.

Imp. § 12.

**Saving for common law powers of agents. 14.** The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act.

Imp. § 13.

**Repeal. 15.** Chapter 150 of the Revised Statutes, 1897, and all amendments thereto are repealed.

**Commencement of Act. 16.** This Act shall come into force and take effect on, from and after the 1st day of September, 1910.

## Bills of Lading and Warehouse Receipts.

### Acts, 1910, c. 63. An Act to amend the Mercantile Law (19th March, 1910)

**Short title. 1.** This Act may be cited as *The Mercantile Law Amendment Act*. R. S. O. 1897, c. 145, § 1.

**Interpretation. 2.** In this Act: a) "Bill of lading" shall include all receipts for goods accompanied by an undertaking to transfer the same from the place where they were received to some other place by any mode of carriage whatever, whether by land or water or partly by land and partly by water: b) "Goods" shall include wares and merchandise: c) "Warehouse receipt" shall mean any receipt given by any person for any goods, in his actual, visible, and continued possession as bailee thereof in good faith and not as of his own property, and shall include: i) A receipt given by any person who is the owner or keeper of a harbour, cove, pond, wharf, yard, warehouse, shed, storehouse, or other place for the storage of goods, delivered to

him as bailee, and actually in the place or in one or more of the places owned or kept by him whether such person is engaged in other business or not; ii) A receipt given by any person in charge of logs or timber in transit from timber limits or other lands to the place of destination of such logs or timber, and iii) A specification of timber.

[3—6. Relate to the rights of sureties, etc., paying the principal debt, to assignment thereof, the rights of co-sureties, co-contractors, etc., inter se, etc.]

*Bills of lading.*

**Rights and liabilities of consignees and endorsees of bills of lading. Certain rights and liabilities not effected. Bills of lading as evidence against signer.** 7. 1. Every consignee of goods named in a bill of lading and every endorsee of a bill of lading to whom the property in the goods therein mentioned passes upon or by reason of such consignment or endorsement, shall have and be vested with all rights of action, and be subject to the same liabilities in respect of the goods as if the contract contained in the bill of lading had been made with him. 2. Nothing in this section shall prejudice or affect any right of stoppage in transitu, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee, by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason of or in consequence of such consignment or endorsement. 3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel, train, or conveyance of any kind, shall be conclusive evidence of shipment as against the master or other person signing the same, notwithstanding that the goods or some part thereof may not have been so shipped, unless the holder of the bill of lading has actual notice at the time of receiving the same that the goods had not in fact been laden on board, or unless the bill of lading has a stipulation to the contrary; but the master or other person so signing, may exonerate himself in respect to such misrepresentation, by shewing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

Imp. 18 & 19, Vic. c. 111. R. S. O. 1897, c. 145, § 5. See Dominion Bills of Lading Act, *supra*. The provisions of this section making a bill of lading conclusive evidence of the shipment of the goods represented thereby, does not apply to cases between the carrier and the shipper, but only between the carrier and consignees or indorsees for value. — *Allen v. Chisholm*, (1873), 23 U. C. Q. B. 237. *Semble* this section creates no estoppel as to the condition of the goods when shipped. The carrier may show that the goods were not in good order and well condition when shipped, although the bill of lading states that the goods shipped were in good order and well condition. — *Chapman v. Zealand*, (1874), 24 U. C. C. P. 421. A custom of the port in order to be binding upon the public generally must be generally known to all persons whose interests are affected by its existence. In any event a port custom is not binding where inconsistent with the express provisions of the bill of lading. — *Parsons v. Hart*, (1900), 30 S. C. R. 473. The construction of a bill of lading is for the Court, not for the jury. — *Merritt v. Ives*, M. T. 4 Vic., cited in *Digest Ontario Case Law*, c. 6444. Where a bill of lading provides that "All deficiency in cargo to be paid for by the carrier and deducted from the freight, and any excess in the cargo to be paid for to the carrier by the consignee," the carrier, at least in the absence of a custom to the contrary, is not entitled to retain the excess in cargo. — *Murton v. Kingston & Montreal Forwarding Co.*, (1882), 32 U. C. C. P. 366. The insertion of the word "train" makes this section applicable to railways. A signing of a shipping note by the agent of a railway company is a sufficient execution of a bill of lading within this section. — *Royal Canadian Bank v. Grand Trunk Railway Co.*, (1873), 23 U. C. C. P. 225. As to responsibility where there are several connecting carriers, and where the bill of lading is signed by the agent severally and not jointly for such carriers, see *Hately v. Merchants Despatch Transportation Co.*, (1885), 12 O. A. R. 201.

*Warehouse receipts, etc., as collateral security.*

**Assignment of warehouse receipts.** 8. 1. The owner of or other person entitled to receive the goods included in a warehouse receipt or bill of lading, may transfer such warehouse receipt or bill of lading by endorsement thereon signed by himself, his attorney or agent to any other person as collateral security for any debt owing by such person. 2. The endorsement shall from the date thereof vest in the transferee all the right and title of the endorser to or in such goods subject to the right of the endorser to have such warehouse receipt or bill of lading re-transferred to him if the debt is paid when due. 3. If the debt is not paid when due the person to whom such warehouse receipt or bill of lading was so transferred may sell the goods and retain the proceeds or so much thereof as will be equal to the amount of the debt, and shall return the overplus, if any, to the endorser.

R. S. O. 1897, c. 145, § 7.



**Warehouse receipt or bill of lading given by owner who is a warehouse man.**

**9.** Where a person by whom a warehouse receipt or bill of lading might be given for goods in his capacity as a miller, or the owner or keeper of a harbour, cove, pond, wharf, yard, warehouse, shed, storehouse, or other place for the storage of goods delivered to him as bailee, master of a vessel or carrier, is the owner of or entitled himself otherwise than in such capacity, to receive the goods, any warehouse receipt or bill of lading or any acknowledgment or certificate intended to answer the purpose thereof, given and endorsed by such person, shall be as valid and effectual for the purposes of this Act as if the warehouse receipt, bill of lading, acknowledgment, or certificate had been given by one person and endorsed by another.

R. S. O. 1897, c. 145, § 8.

**As to goods manufactured from articles pledged. 10.** If goods are manufactured or produced from the goods or any of them, included in or covered by any warehouse receipt, while so covered, the person holding such warehouse receipt shall hold or continue to hold such goods during the process and after the completion of such manufacture or production, with the same right and title and for the same purposes and upon the same conditions, as he held or could have held the original goods.

R. S. C. 1906, c. 29, § 89 (1).

**Limit of time for holding goods in pledge. 11.** 1. No goods other than timber, boards, deals, staves, sawlogs, or other lumber shall be held in pledge for any period exceeding six months. 2. No lumber, boards, deals, staves, sawlogs, or other lumber shall be held in pledge for any period exceeding twelve months. 3. No transfer of a bill of lading or warehouse receipt shall be made under this Act to secure the payment of any debt unless the debt is contracted at the time of the acquisition of the bill of lading or warehouse receipt or upon the written promise or agreement that such bill of lading or warehouse receipt would be given to such person.

R. S. O. 1897, c. 145, §§ 9, 10 (1).

**Prior claim of person making advance over unpaid vendor. Proviso. 12.** All advances made on the security of a bill of lading or warehouse receipt, shall give to the person making the advances a claim for the repayment of the advances on the goods therein mentioned, or into which they have been converted, prior to and by preference over the claim of any unpaid vendor or other creditor save and except claims for wages for labour performed in making and transporting timber, boards, deals, staves, sawlogs, or other lumber: Provided that such preference shall not be given over the claim of an unpaid vendor who had a lien upon the goods at the time of the acquisition by such person of the bill of lading or warehouse receipt, unless the same was acquired by him without knowledge of such lien.

**Sale of goods on non-payment of debt. Notice of sale of timber, etc. Notice of sale of other goods. Sale to be by auction. 13.** In the event of the non-payment at maturity of any debt or liability secured by a bill of lading or warehouse receipt, the holder thereof may sell the goods mentioned therein or so much thereof as will suffice to pay such debt or liability with interest and expenses, returning the surplus, if any, to the person from whom the bill of lading or warehouse receipt, or the goods mentioned therein, as the case may be, were acquired: Provided that such power of sale shall be exercised subject to the following provisions: a) No sale of any timber, boards, deals, staves, sawlogs, or other lumber shall be made under this Act without the consent in writing of the owner until notice of the time and place of such sale has been given by registered letter to the last known address of the pledgor at least thirty days before the sale thereof; b) No goods other than timber, boards, deals, staves, sawlogs, or other lumber shall be sold under the provisions of this section without the consent of the owner until notice of the time and place of sale has been given by a registered letter to the last known address of the pledgor thereof at least ten days before the sale thereof; c) Every sale under such power of sale without the consent of the owner shall be made by public auction after notice thereof by advertisement, in at least two newspapers published in or nearest to the place where the sale is to be made, stating the time and place thereof.

R. S. O. 1897, c. 145, §§ 9, 10, 11; R. S. C. c. 29, § 89.

**Transfer of warehouse receipts for crude petroleum issued by incorporated companies. 14.** 1. Every transportation receipt, warehouse receipt, accepted order and certificate for crude petroleum, issued by any incorporated company authorized to carry on the business of warehousing, shall be transferable by endorsement, either special or in blank, and upon being endorsed in blank shall become transferable by

delivery, and every such endorsement or transfer by delivery shall transfer all right of property and possession of the petroleum mentioned in any such transportation or warehouse receipt, accepted order or certificate, to the endorsee or transferee thereof, subject to the terms and conditions of such transportation or warehouse receipt, accepted order or certificate, as fully and completely as if a sale of the petroleum mentioned therein had been made in the ordinary way. 2. On the delivery of any petroleum mentioned in such document, by such company, in good faith, to a person in possession of such transportation or warehouse receipt, accepted order or certificate so endorsed or transferred, the company shall be freed from all further liability in respect thereof, and the endorsee or transferee or holder of every such transportation or warehouse receipt, accepted order or certificate, to whom the property in the petroleum mentioned therein passes by reason of such endorsement or delivery, shall have transferred to and vested in him all rights of action and be subject to the same liabilities in respect of such petroleum as if the contract contained in the transportation or warehouse receipt, accepted order or certificate had been made by the company with himself.

R. S. O. 1897, c. 145, § 12.

**Repeal.** 15. Chapter 145 of the Revised Statutes, 1897, and all amendments thereto are repealed.

**Commencement.** 16. This Act shall come into force and take effect on, from, and after the first day of September, 1910.

## Acts, 1910, c. 64. An Act respecting Assignments and Preferences by Insolvent Persons (7th March, 1910).

**Short title.** 1. This Act may be cited as *The Assignments and Preferences Act*.

The *British North America Act, 1867*, § 91, gives to the Dominion Parliament, exclusive authority to deal with all matters relating to bankruptcy and insolvency. The Provincial Legislatures are vested with exclusive jurisdiction over property and civil rights. — Ibid, § 92. A Dominion Act relating to bankruptcy and insolvency is *intra vires* the Dominion Parliament although it interferes with property, civil rights, and procedure in the Provinces. *Cushing v. Dupuy*, (1880), 5 A. C. 409; *Tennant v. Union Bank of Canada*, (1894) A. C. 31. As to the power of the Dominion Parliament to pass laws relating to the compulsory winding-up of companies, see note to Dominion *Winding-up Act*, § 1. In the absence of a Dominion Act relating to bankruptcy and insolvency, the Provinces have power to pass laws relating to assignment and fraudulent preferences. — *Attorney General of Ontario v. Attorney General of Canada*, (1894) A. C. 189; reversing *In re Assignments and Preferences Act*, (1893), 20 O. A. R. 489; overruling *Union Bank v. Neville*, (1891), 21. O. R. 152; see also: *Clarkson v. Ontario Bank*, (1887), 15 O. A. R. 166; *In re Killam*, (1878), 14 C. L. J. (N. S.) 242; *Bleasdel v. Townsend*, (1883), 3 C. L. T. 509. In *In re Bergman v. Armstrong*, (1902), 4 O. L. R. 717; 1 O. W. R. 799, it was held, that an action for a declaration of right to rank against an insolvent estate vested in the assignee under the *Assignments Act*, R. S. O. 1897, c. 147, was not within the jurisdiction of a Division Court.

**Interpretation.** 2. In this Act; "Judge" shall mean a Judge of the County or District Court of the county or district in which the assignment is required to be registered.

**Where judge disqualified.** 3. Where a Judge is disqualified to act in a matter arising under this Act, a Judge of the County or District Court of an adjoining county or district shall have jurisdiction to act in his place.

### *Fraudulent judgments and assignments.*

**Certain confessions of judgment to be void.** 4. Every confession of judgment, cognovit actionem, or warrant of attorney to confess judgment given by a person being at the time in insolvent circumstances or unable to pay his debts in full or knowing himself to be on the eve of insolvency, voluntarily or by collusion with a creditor with intent thereby to defeat, hinder, delay, or prejudice his creditors, wholly or in part, or to give one or more of his creditors a preference over his other creditors or over any one or more of them, shall be null and void as against the creditors of the person giving the same and shall be ineffectual to support any judgment or execution.

R. S. O. 1897, c. 147, § 1. A judgment by confession is a judgment entered for the plaintiff in case the defendant, instead of entering a plea, confesses the action, or, at any time before



trial, confesses the action and withdraws his plea or other allegation. — *Bouvier, Law Dictionary*, h. v. A cognovit actionem is a written confession of an action by a defendant, subscribed but not sealed, and authorizing the plaintiff to take judgment, generally for a sum named. — *Ibid.* A warrant of attorney differs from a cognovit in that the former is under seal and is generally given before suit is brought. — *Ibid.* Cognovits and warrants of attorney are not within the Statute 13 Eliz. and are good at common law, though their effect is to prefer one creditor over another. — *Holbird v. Anderson*, (1793), 5 T. R. 255. As to the meaning of "insolvent circumstances" and "eve of insolvency," see notes to § 5, *infra*. The terms "confession of judgment," "cognovit actionem," and "warrant of attorney" are strictly construed, and are limited to the instruments known by those names at the time of the passage of the Act. Thus, a withdrawal of a defence under § 113 of the Division Courts Act, R. S. O. 1887, c. 51 (now 10 Edw. 7, c. 113) does not come within the prohibition of this section. — *Bailey v. Bank of Hamilton*, (1894), 21 O. A. R. 156. Neither does striking out a defence. — *Davis v. Wickson*, (1882), 1 O. R. 369; nor availing oneself of a term of credit and taking a discount in lieu thereof. — *King v. Duncan*, (1881) 29 Grant, 113; *MacDonald v. Crombie*, (1883), 2 O. R. 243; see also, *Turner v. Lucas*, (1882), 1 O. R. 623; nor to defend one of two actions and to forego defence on the other. — *Young v. Christie*, (1859), 7 Grant, 312; *McKenna v. Smith*, (1862), 10 Grant, 40; *Labatt v. Bixell*, (1881), 28 Grant, 593; *Hermans v. Searle*, (1881), 29 Grant, 278. Where an action is brought upon a bona fide debt, another creditor can not object to a judgment merely because there was a defence arising out of formal defects in the papers which the debtor might have set up in the action. — *Bowerman v. Philips*, (1888), 15 O. A. R. 679. Where there is no collusion, "pressure" will prevent the transaction from being voluntary, and its validity will be sustained. The pressure must be "the causa causans of the payment, and not any intention of giving a preference to particular creditors" (per Cairns, L. J.), in *Tomkins v. Saffery*, (1887), 3 A. C. 225. It must be the dominating or governing motive impelling the action of the debtor. — *Parker, Frauds on creditors*, p. 182. Although interpreting another (now obsolete) provision of the *Assignments Act*, the following cases may still be looked to, to ascertain the nature of pressure sufficient to destroy the voluntary character of the Act; *Davison v. Ross*, (1876), 24 Grant, 22; *Stephens v. McArthur*, (1891), 19 S. C. R. 446; *Molson Bank v. Halter*, (1890), 18 S. C. R. 88; *Long v. Hancock*, (1885), 12 S. C. R. 532; *Slater v. Oliver*, (1884), 7 O. R. 158; *Beattie v. Wenger*, (1897), 24 O. A. R. 72; *Brayley v. Ellis & Taylor*, (1884), 9 O. A. R. 565; *Powell v. Calder*, (1885), 8 O. R. 505; *Whitney v. Toby*, (1882), 6 O. R. 54. The practical importance of the rights given to creditors under this section has been considerably lessened by the passage of the Creditors Relief Acts. As to meaning of words "null and void," see notes to next section.

**Gifts, transfers, etc., made by insolvents which defeat or prejudice creditors to be void.** "Creditor" for certain purposes to include surety and endorser. 5. 1. Subject to the provisions of section 6, every gift, conveyance, assignment, or transfer, delivery over or payment of goods, chattels, or effects, or of bills, bonds, notes, or securities, or of shares, dividends, premiums, or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency with intent to defeat, hinder, delay, or prejudice his creditors, or any one or more of them, shall as against the creditor or creditors injured, delayed, or prejudiced, be null and void. — 2. Subject to the provisions of section 6 every such gift, conveyance, assignment, or transfer, delivery over or payment made by a person being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, to or for a creditor with the intent to give such creditor an unjust preference over his other creditors or over any one or more of them shall, as against the creditor or creditors injured, delayed, prejudiced, or postponed, be null and void. — 3. Subject to the provisions of section 6, if such a transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them, it shall in and with respect to any action or proceeding which, within sixty days thereafter, is brought, had, or taken to impeach or set aside such transaction, be presumed *prima facie* to have been made with the intent mentioned in subsection 2, and to be an unjust preference within the meaning hereof whether the same is made voluntarily or under pressure. — 4. Subject to the provisions of section 6, if such a transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them, it shall, if the debtor within sixty days after the transaction makes an assignment for the benefit of his creditors be presumed *prima facie* to have been made with the intent mentioned in subsection 2, and to be an unjust preference within the meaning hereof, whether the same be made voluntarily or under pressure. — 5. The word "creditor" in the fifth and sixth lines of subsection 2, in the second and third lines of subsection 3, and in the second and third lines of subsection 4, shall include any surety and the endorser of any promissory note

or bill of exchange who would upon payment by him of the debt, promissory note or bill of exchange, in respect of which such suretyship was entered into or such endorsement was given become a creditor of the person giving the preference within the meaning of these subsections.

R. S. O. 1897, c. 147, § 2. The words used in the corresponding section of the Act of 1897 are "utterly void," while in § 1 (§ 4 of the present Act) the words are "null and void." In both of the sections of the present Act, the words are "null and void." It is submitted that there is no difference in the meaning of the two clauses. Following the general rule of statutory construction, that when the word "void" is introduced for the benefit of the parties only, it is used in the sense of "voidable," the Ontario Courts have, in general, held that the transactions are voidable, only at the instance of the creditors whose rights are affected. — *Menden v. Braden*, (1894), 21 O. A. R. 352. In interpreting the words "absolutely null and void" in the Ontario *Chattel Mortgage Act*, Strong, C. J. said: "I am not impressed with the soundness of the construction which reads the terms 'absolutely null and void' as 'voidable.' So to cut down the words of the Act is, I venture to say, in direct conflict with the manifest policy of the Legislature." — *Clarkson v. McMaster*, (1895), 25 S. C. R. 96. But see *Heaton v. Flood*, (1897), 29 O. R. 87; *Meharg v. Lumbers*, (1896), 23 O. A. R. 51, commenting on *Clarkson v. McMaster*, *supra*. In *Mundell v. Tinkes*, (1883), 6 O. R. 625, Boyd, J. said at page 628: "The decided weight of authority . . . is that, after the property passes, whether by execution or a written instrument, or by other means, sufficient in law, it is not for the fraudulent grantor to undo the matter either out of Court or by aid of the Court"; and again at page 637: "I have always understood the rule of equity to be expressed by Esten, V. C., in *Phelan v. Fraser*, 6 Grant, 336, that the Court never assists a person who has placed his property in the name of another in order to defraud his creditors." In *Johnson v. Cline*, (1888), 16 O. R. 129, at p. 138, Ferguson, J. commenting upon the above quotation, said: "This proposition is supported by many other authorities and is, I think, doubtless a correct one." See also *Day v. Day*, (1889), 17 O. A. R. 157; *Langlor v. Baby*, (1864), 11 Grant, 21; *Ernes v. Barber*, (1867), 15 Grant, 679. "The weight of authority greatly preponderates in favour of the view that, in order to work a fraudulent preference of a creditor under R. S. O. c. 118 (now this Act), there must be a concurrence of intent to do so on the part of both debtor and creditor. The views expressed by the Judges in *Hepburn v. Park*, 6 O. R. 472; *Brown v. Sweet*, 7 O. A. R. 725; *Brayley v. Ellis*, 9 O. A. R. 565, which have been acted upon in *Lancey v. Merchants Bank*, 10 O. R. 169 must govern me as against the opposite view expressed in the case of *Ivy v. Knox*, 8 O. R. 635." (Per Boyd, C.) in *Burn v. Mackay*, (1885), 10 O. R. 167; *McRoberts v. Steinoff*, (1886), 11 O. R. 369; *Johnson v. Hope*, (1890), 17 O. A. R. 12; *Ashley v. Brown*, (1890), 17 O. A. R. 500; *Dana v. McLean*, (1901), 2 O. L. R. 466. This doctrine is criticised as judicial legislation, but followed in *Lamb v. Young*, (1890), 10 O. R. 104; *Molson's Bank v. Halter*, (1890), 18 S. C. R. 88. Where the conveyance is in pursuance of a previous promise, it will be upheld. — *McRoberts v. Steinoff*, (1886), 11 O. R. 369. "The statute 13 Eliz., c. 5, § 6, saves from its operation conveyances, etc. made upon good consideration and bona fide to persons not having, at the time, any notice or knowledge of the fraud. It is remarkable that there is no similar general provision in our statute. In one number alone, § 3—1 (now § 6) the exception is extended to persons who are described as innocent purchasers or parties; which, of course, must mean persons without notice or knowledge. But there, the word 'bona fide' is used throughout, and, it would seem to follow that the legislature did not intend to involve persons having neither knowledge or notice, in the disabling and penal consequences of the acts thereby forbidden. It would paralyze trade and mercantile business altogether, if transactions entered into in all honesty and good faith, and for valuable consideration, with persons apparently solvent and prosperous, were liable to be undone upon its being afterwards discovered and proved that such persons were, at the time, in embarrassed circumstances or unable to pay their debts in full. Such a construction of the Act would make it a trap and snare instead of an enactment salutary and beneficial to the mercantile community. It has always been the policy of the law to protect, as far as possible, persons acting bona fide and without notice of fraud or other wrong doing, and so I think a person who deals bona fide with an embarrassed debtor, and who, at the time of the dealing, has no knowledge or notice of his embarrassed condition, is saved from all the consequences enacted by the Statute. It is hard to imagine how a transaction can be otherwise than bona fide with reference to what is forbidden in this statute, if it has been entered into without knowledge or notice of the embarrassments of the debtor." — Per Maclellan, J. A. in *Johnson v. Hope*, (1890), 17 O. A. R. 12. An adjudication of bankruptcy, or open and notorious insolvency, is not necessary, in order to show that a person is in insolvent circumstances or in unable to pay his debts in full. Cp. *Davidson v. Douglas*, (1868), 15 Grant, 347. Strictly speaking, a person is insolvent if his assets, when disposed of at an execution sale, would be insufficient to pay his debts in full. "A debtor is legally insolvent when he has not sufficient property to pay all his debts if sold under legal process, and commercially insolvent when he has not the means to pay off and discharge his civil obligations as they become due in the ordinary course of business." — Per Rose, J., in *Rae v. McDonald*, (1887), 13 O. R. 352. But in the same case, it was said: "In determining whether a debtor is insolvent, etc., his assets or effects are not to be estimated at what they might bring at a forced sale under execution, but at the fair value in cash in the market at any ordinary sale." — Per Cameron, C. J., *Ibid.* *Rae v. McDonald*, *supra*, was discussed in *Warnock v. Kloepper*, (1887), 14 O. R.



288; 15 O. A. R. 324; 18 S. C. R. 701, and it was there said that a person is in insolvent circumstances if he does not pay his debts and is unable to meet the current demands of his creditors, and if he has not the means of paying them in full out of his assets realized upon a sale for cash, or its equivalent. In *Dominion Bank v. Cowan*, (1887), 14 O. R. 465, it was said that a debtor is insolvent if he has not sufficient property subject to execution to pay all his debts if sold under legal process at a sale fairly and reasonably conducted. Where there is a duty to convey, the intent to injure creditors is negatived. — *Stuart v. Thomson*, (1893), 23 O. R. 503. The mere fact that all the assets are either mortgaged or under warehouse receipts, is not, of itself, sufficient to show insolvency. The value of the equity of redemption must be taken into consideration in determining the debtor's financial position. — *Dominion Bank v. Cowan*, (1887), 14 O. R. 465. The value of the assets is to be estimated at the date of the impeached transaction. — *Clarkson v. Sterling*, (1887), 14 O. R. 460; *Parker, Frauds on creditors*, p. 108. In *Langley v. Palter*, (1909), 13 O. W. R. 951, an action by the assignee for the benefit of creditors for the conversion of certain goods were dismissed, the *prima facie* presumption of fraud being rebutted by the manager of the insolvent company swearing that he did not intend to give a preference, and proof that the defendant did not know the hopeless condition of the insolvent's affairs. In *Casserley v. Hughes*, (1905), 5 O. W. R. 599; 6 O. W. R. 70, the Court upheld a conveyance by an insolvent to his daughter, holding that there was nothing to show that the daughter was, at the time, aware of her father's insolvency. The following cases determine the question of what evidence is sufficient to satisfy the burden of rebutting the presumption of fraud, where an assignment is presumed, *prima facie*, to have been made with intent to delay, defeat or injure creditors: *Crawford v. Magee*, (1905), 6 O. W. R. 44; *Attwood v. Pett*, (1907), 9 O. W. R. 173, 748; *Falls v. Gibb*, (1906), 8 O. W. R. 397; *Allen v. Bank of Ottawa*, (1908), 11 O. W. R., 148; *McNiell v. Dawson*, (1902), 1 O. W. R. 24; *Allen v. McLean*, (1906), 8 O. W. R. 223, 761; *Keenan v. Richardson*, (1902), 1 O. W. R. 333; *Baldocchi v. Spade*, (1907), 38 S. C. R. 577; affirming s. c., (1906), 7 O. W. R. 325; 8 O. W. R. 705; *Dana v. McLean*, (1902), 2 O. L. R. 466; *Desmarlean v. Dingman*, (1908), 11 O. W. R. 101; *Elwell v. Crate*, (1910), 15 O. W. R. 261. As to what evidence is sufficient, in an action by the assignee to set aside a mortgage made by the insolvent, to prove absence of knowledge by the mortgagee of the insolvency, see *Wade v. Elliot*, (1907), 10 O. W. R. 206; 11 O. W. R. 378. At the revision of the Ontario Statutes in 1897, the words "prima facie" were inserted after the word "presumed," which occurs in sub-sections 3 and 4 of section 2 of c. 147 and the doubt whether the presumption was rebuttable was thereby set at rest; but even under the language of subsection 2 (b) of section 2 of the Act of 1887, i. e. without the words "prima facie", the presumption was rebuttable; and in the case of a mortgage of land to secure a debt followed one week later by an assignment by the mortgagor to the plaintiff for the benefit of creditors, defendants were entitled to show that there was no intent to prefer. — *Craig v. McKay*, (1906), 12 O. L. R. 121; affirming s. c., (1904), 8 O. L. R. 651; 4 O. W. R. 274; 6 O. W. R. 160; 7 O. W. R. 507; following *Lawson v. McGeoch*, (1892), 20 O. A. R. 464. An insolvent trader sold out his business to his wife, who was one of his creditors, who had means of her own and who actually raised the money to make the purchase. It was held that the sale was valid, notwithstanding that the wife knew of her husband's insolvency and that he intended to prefer certain of his creditors to others by payments out of the purchase money. — *Langlay v. Beardsley*, (1909), 18 O. L. R. 67; 13 O. W. R. 348. Where a debtor in August, 1899, procured the consent of his creditors to payment of his debts by notes at different times extending to the following March, and where one creditor insisted upon more prompt payment and took from the debtor notes payable in September, an assignment having been made the following November, it was held, affirming the judgment of the Court of Appeals, (1901), 3 O. L. R. 5 that the debtor, having paid the note voluntarily and without coercion could not, himself, have recovered back the amount and that his assignee was in no better position. — *Langley v. Van Allen*, (1902), 32 S. C. R. 174; see also *Elgin Loan & Savings Company v. Orchard*, (1904), 7 O. L. R. 695. One who has a right of action for tort and subsequently recovers judgment, is not a creditor in a position to attack a transaction entered into by the tortfeasor prior to commencement of the action in tort. — *Ashley v. Brown*, (1890), 17 O. A. R. 500.

*Assignments for general benefit of creditors.*

**Assignments for benefit of creditors and bona fide sales, etc., protected. Transfer to creditor of consideration for sale invalid. General assignment not in accordance with Act, when voidable. Security given up upon void payment to be returned. Payment of wages protected. Exchange of securities protected. Certain assignments to be valid.** 6. 1. Nothing in the next preceding section shall apply to an assignment made to the sheriff of the county or district in which the debtor resides or carries on business or with the consent of a majority of his creditors having claims of \$ 100 and upwards computed according to the provisions of section 24, to another assignee resident within Ontario, for the purpose of paying rateably and proportionately and without preference or priority all the creditors of the debtor their just debts; nor to any bona fide sale or payment made in the ordinary course of trade or calling to an innocent purchaser or person, nor to any payment of money to a creditor, nor to any bona fide conveyance, assignment, transfer, or delivery over

of any goods or property of any kind, which is made in consideration of a present actual bona fide payment in money, or by way of security for a present actual bona fide advance of money, or which is made in consideration of a present actual bona fide sale or delivery of goods or other property where the money paid, or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor. — 2. In the case of a valid sale of goods or other property, and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor, under circumstances which would render void such a payment or transfer by the debtor personally and directly, the payment or transfer, even though valid as respects the purchaser, shall be void as respects the creditor to whom the same is made. — 3. Every assignment for the general benefit of creditors, which is not void under section 5, but is not made to the sheriff, nor to any other person with the prescribed consent of creditors, shall be void as against a subsequent assignment which is in conformity with this Act, and shall be subject in other respects to the provisions thereof until and unless a subsequent assignment is executed in accordance therewith. — 4. Where a payment has been made which is void under this Act, and any valuable security was given up in consideration of the payment, the creditor shall be entitled to have the security restored, or its value made good to him before, or as a condition of, the return of the payment. — 5. Nothing herein shall: a) Affect *The Wages Act*, or prevent a debtor providing for payment of wages due by him in accordance with the provisions of that Act; b) Affect any payment of money to a creditor, where such creditor by reason or on account of such payment, has lost or been deprived of, or has in good faith given up, any valid security which he held for the payment of the debt so paid, unless the security is restored or its value made good to the creditor; c) Apply to the substitution in good faith of one security for another security for the same debt so far as the debtor's estate is not thereby lessened in value to the other creditors; or d) Invalidate a security given to a creditor for a preexisting debt where, by reason or on account of the giving of the security, an advance in money is made to the debtor by the creditor, in the bona fide belief that the advance will enable the debtor to continue his trade or business and to pay his debts in full.

R. S. O. 1897, c. 147, § 3. A sheriff who sells at auction land assigned to him under this Act, does not sell in the same capacity as if he were selling it under an execution and he is not the agent of the person who bids. — *McIntyre v. Faubert*, (1895), 26 O. R. 427. Since he takes an assignment as a public officer, he can not disclaim. After his term of office expires, his duties fall upon his successors and in case of his death before such expiration, his rights and duties as an assignee devolve upon his deputy. — *Brown v. Grove*, (1889), 18 O. R. 311. An assignment, although not made to a sheriff and without the consent of creditors, is valid; but a subsequent assignment executed with such consent will supersede the first. — *Anderson v. Glass*, (1889), 16 O. R. 592. Consent of creditors may be obtained subsequent to the assignment. — *Hall v. Fortye*, (1889), 17 O. R. 435. An assignment executed without the assent or knowledge of creditors is revocable. — *Cooper v. Dickson*, (1884), 10 O. A. R. 50; *Clark v. Ried*, (1896), 27 O. R. 618; *Rennie v. Black*, (1896), 26 S. C. R. 356; but such an assignment, if executed at the instance of creditors, or if acted upon by creditors, can not be objected to, even by an execution creditor. — *Nolan v. Donnelly*, (1884) 4 O. R. 440; *Ball v. Tennant*, (1895), 25 O. R. 50. The solicitor of a creditor may assent on his client's behalf. — *Nelles v. Maltby*, (1884), 5 O. R. 263. Acceptance of payment of a dividend waives a creditor's right to object to the assignment. — *Beemer v. Oliver*, (1884), 10 O. A. R. 656. So, a creditor who attends a meeting and who acts as inspector can not thereafter attack the assignment. — *Gardner v. Kloefer*, (1885), 7 O. R. 603. But if a creditor attacks an assignment and is unsuccessful, he is not thereafter barred from coming in as a creditor and ranking for his claim. — *Kloefer v. Gardner*, (1886), 10 O. R. 415; s. c., (1886), 14 O. A. R. 60; s. c., (1887), 15 S. C. R. 390. The assignment, to be valid, must be made for the general benefit of all the creditors without the imposition of unreasonable terms by the debtor, or the retention of any benefit for himself. — *Whitman v. Union Bank of Halifax*, (1889), 16 S. C. R. 410; *Jennings v. Hyman*, (1886), 11 O. R. 65. After an assignment is made, its effect is placed beyond the control of the assignor. — *Re Unitt and Prott*, (1892), 23 O. R. 78. If the interests of the creditors demand it, the business may be carried on for a reasonable time by the assignee, before being disposed of. — *O'Brien v. Clarkson*, (1884), 10 O. A. R. 603; *Ontario Bank v. Lamont*, (1885), 6 O. R. 147; *Slater v. Budenach*, (1884), 10 S. C. R. 296. It is well settled that in order to constitute a "bona fide sale or payment," good faith on the part of the purchaser is sufficient. Fraudulent intent on the part of the assignor will not vitiate the transaction. — *MacKintosh v. Pagose*, (1895), 1 Ch. 505. For further discussion of this principle see notes to § 5, *supra*. As to what constitutes "payment of money to a creditor", see: *Campbell v. Roche*, (1891), 18 O. A. R. 646; *Davidson v. Fraser*, (1896), 23 O. A. R. 439; s. c., (1897), 28 S. C. R. 272, overruling *Armstrong v. Hemstreet*, (1895), 23 O. R., 336; see also, *Halwell v. Wilmot*, (1897), 24 O. A. R. 628; *Building Loan Association v. Palmer*, (1887), 12 O. R. 1. Payment



in good faith by the purchaser at the vendor's request, of part of the purchase money to the vendor's creditor, is a payment that can not be impeached. — *Gordon v. Union Bank*, (Armour, C. J.), May 6th, 1898. So, where a debtor, at his brother's instance, sells his stock to a bona fide purchaser and pays the proceeds to the holder of his notes, endorsed by his brother, the payment is good under this section. — *Harvey v. McNaughton*, (1884), 10 O. A. R. 616. In *Stephens v. Boisseau*, (1896), 23 O. A. R. 230, s. c., (1896), 26 S. C. R. 437, it was held that a mortgagee who, in good faith, realizes his security, can retain, as against the mortgagor's assignee the surplus proceeds of the sale of mortgaged chattel in satisfaction of a unsecured debt. The "advance of money" must be made directly to the debtor and must be in actual cash. — *Stoddart v. Wilson*, (1889), 16 O. R. 17; see also *Burns v. Wilson*, (1897), 28 S. C. R. 207, which in effect overruled the decision in *Gibbons v. Wilson*, (1889), 17 O. A. R. 1. It has been held that security for the price of goods to be delivered in the future is valid. — *Goulding v. Deeming*, (1888), 15 O. R. 201. The question of "fair and reasonable value" is one of fact, to be decided upon the evidence in each case. — *Came on v. Perrin*, (1887), 14 O. A. R. 565. As to what is the giving up of "valuable security," see *Nelles v. Paul*, (1879), 4 O. A. R. 1; *Beattie v. Wenger*, (1897), 24 O. A. R. 72. Where there is an existing debt, and a creditor, in good faith, makes an additional loan, he may take security to cover both the old and the new debts. — *Hyman v. Cuthbertson*, (1886), 10 O. R. 443; *Ross v. Dunn*, (1889), 16 O. A. R. 562. But the new advance must bear a substantial relation to the value of the security taken. — *Kalus v. Hergert*, (1876), 1 O. A. R. 75; *Miller v. Reid*, (1879), 4 O. A. R. 479. The Court will examine into the objects and intentions of the parties to ascertain whether or not the true object is to secure merely the old debt. — *Rielle v. Reid*, (1898), 28 O. R. 497. Where an insolvent's manager made a statutory declaration as to the assets and liabilities of the insolvent, showing a surplus of assets, a mortgage given to secure a past indebtedness and to cover future advances, the mortgagee believing the truth of such statement, was upheld. — *Bell v. Robinson*, (1909), 13 O. W. R. 696. It has been held that payment of other claims at the debtor's request, taking security for the amount so paid, and also for the original debt, is not an "advance" within the meaning of this section. — *Boyd v. Glass*, (1883), 8 O. A. R. 632; see also *Morphy v. Cowell*, (1904), 3 O. L. R. 314, following *Molson Bank v. Halter*, (1890), 18 S. C. R. 88. In *Goulet v. Greenway*, (1902), 1 O. W. R. 550, payments made by an insolvent debtor were examined into and were held to be within the provisions of this section and therefore valid. Where a member of an insolvent firm, although not aware of the insolvency, sold his stock in trade and deposited the cheque received for the sale, to his credit with his banker, to whom he was indebted upon an overdue promissory note that had been, without his knowledge, charged against his account and where, within two days after making the deposit, the insolvent gave the bank a cheque to cover the amount of the note, it was held, in an action to have the transfer of the cheque set aside, that the transaction was a payment to a creditor within the meaning of this section, and was not, under the circumstances, void as against creditors. — *Robinson v. McGillwray*, (1907), 39 S. C. R. 281, affirming s. c., (1907), 13 O. L. R. 232.

**Assignee must reside in the Province. 7.** No person other than a permanent and bona fide resident of Ontario shall be assignee under an assignment within the provisions of this Act, nor shall any assignee delegate his duties as assignee to or appoint as deputy any person who is not a permanent and bona fide resident of Ontario; and no charge shall be made or recoverable against the assignor or his estate for any services or other expenses of any such assignee, deputy, or delegate of any assignee who is not a permanent and bona fide resident of Ontario.

R. S. O. 1897, c. 147, § 4. In *Tennant v. Macewan*, (1896), 24 O. A. R. 132, it was held that an assignee, who was a resident of Ontario, could not recover commissions, where the estate was managed by his partner, a resident of Quebec.

**Form of assignment for general benefit of creditors. 8.** Every assignment made under this Act, for the general benefit of creditors if the property is described in the words "all my personal property which may be seized and sold under execution and all my real estate, credits, and effects," or in words to the like effect, shall vest in the assignee all the real and personal estate, rights, property, credits, and effects, whether vested or contingent, belonging at the time to the assignment to the assignor, except such as are by law exempt from seizure or sale under execution, subject, however, as regards land, to the provisions of *The Registry Act* and *The Land Titles Act*.

R. S. O. 1897, c. 147, § 5. A statutory assignment has no extraterritorial effect. — *Macdonald v. Georgian Bay Lumber Co.*, (1878), 2 S. C. R. 364. In *Ball v. Tennant*, (1894), 21 O. A. R. 602, the Court held that the benefit of a covenant to indemnify the assignor against the payment of a mortgage did not pass under an assignment. As to the construction of the phrase "exempt from seizure or sale under execution," see: *Re Unitt & Prott*, (1892), 23 O. R. 78; *Wright v. Hollingshead*, (1896), 23 O. A. R. 1; *Field v. Hart*, (1895), 22 O. A. R. 449. In *Reinhardt v. Hunter*, (1905), 6 O. W. R. 412, the interest of a judgment debtor in the estate of his deceased father was held to pass under his assignment for the benefit of creditors; following *Re Unitt & Prott*, (1892), 23 O. R. 78. An assignment may be made by a partnership, but one partner can not assign firm assets without the consent of his copartner. — *Nolan v. Donnelly*, (1883), 4 O. R. 440; *Nelles v. Maltby*, (1884), 5 O. R. 263; see also *Ball v. Tennant*, (1894), 25

O. R. 50; s. c., (1894), 21 O. A. R. 602; *Powell v. Calder*, (1885), 8 O. R. 505. Upon an assignment of land, purchased by the assignor subject to a mortgage, the equity of redemption passes to the assignee, free from the claim of dower on the part of the assignor's wife. — *Gardner v. Brown*, (1890), 19 O. R. 202. But see *In Re Music Hall Block*, *Dumble v. McIntosh*, (1884), 8 O. R. 225; see also *Beavis v. McGuire*, (1882), 7 O. A. R. 704; *Morris v. Martin*, (1890), 19 O. R. 564.

**All assignments for general benefit of creditors to be subject to this Act.** 9. Every assignment for the general benefit of creditors, whether it is or is not expressed to be made under or in pursuance of this Act, and whether the assignment does or does not include all the real and personal estate of the assignor, shall vest the estate, whether real or personal or partly real and partly personal, thereby assigned in the assignee therein named for the general benefit of creditors, and such assignment and the property thereby assigned shall be subject to all the provisions of this Act, and the same shall apply to the assignee named in such assignment.

R. S. O. 1897, c. 147, § 6. In *Blain v. Peaker*, (1889), 18 O. R. 109, the court held that an assignment of the insolvent's personal property only, did not fall within the provisions of the Act, R. S. O. 1887, c. 124; "and the principle of this case was carried further in subsequent cases in which it was held that excepting from the assignment the assignor's book debts to even a small amount took it out of the Act; and this section was added by 58 Vic. c. 23, to overcome this difficulty, and to prevent advantage being taken of a non-statutory form of assignment." — *Cassels, Ontario Assignments Act* (3rd Ed.) p. 45.

**How claims are to rank where different estates.** 10. If an assignor executing an assignment under this Act for the general benefit of his creditors owes debts both individually and as a member of a partnership, or as a member of different partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other or others after all the creditors of such other estate or estates have been paid in full.

R. S. O. 1897, c. 147, § 7. Where the origin of a debt, for which plaintiff claims to rank against the separate estate of a partner, is on a contract entered into with the firm, which also failed and has existing assets, the plaintiff, as such firm creditor, can not rank against the separate estate of the partner. — *Frost v. Stoddart*, (1908), 12 O. W. R. 1133. This section does not apply unless there is an administration of separate and joint estates; so that creditors having claims against an assignor, as a partner in a former firm, are entitled to rank *pari passu* with his subsequent creditors. — *MacDonald v. Balfour*, (1893), 20 O. A. R. 404; see also *Re Walker*, (1880), 6 O. A. R. 169. The rule of distribution laid down in this section is that, generally adopted, in the administration of estates in insolvency. As bearing upon this rule, see: *Bank of Toronto v. Hall*, (1884), 6 O. R. 644; *Martin v. Evans*, (1884), 6 O. R. 238; *Re McDonagh v. Jephson*, (1889), 16 O. A. R. 107; *Barthelmes v. Condie*, (1906), 8 O. W. R. 717. Where a member of a partnership joined with the partnership in making a note for the price of goods supplied to the firm by the plaintiff, it was held that plaintiff was entitled to rank upon the insolvent estate of the partner for the amount of the note, rateably with the individual creditors of the partner. In this case, the plaintiff, having elected, before accepting a dividend from the insolvent estate of the partnership, to pursue his remedy against the estate of the partner, the question whether, under the statute, it was necessary to elect, did not arise. — *Gordon v. Matthews*, (1909), 19 O. L. R. 564; affirming s. c., (1909), 18 O. L. R. 340; 13 O. W. R. 649, which reversed s. c., (1908), 12 O. W. R. 1274; see also, *Frost and Wood Company v. Stoddart*, (1908), 12 O. W. R. 1133. As to proof between partners, see *In re Ruby*, *Trusts Corporation of Ontario*, (1897), 24 O. A. R. 509.

**Appointment of substituted assignee. Estate to vest in substituted assignee.**

11. 1. A majority in number and value of the creditors who have proved claims to the amount of \$ 100 or upwards, may substitute for the sheriff, or for an assignee under an assignment to which subsection 3 of section 6 applies, a person residing in the county or district in which the assignor resided or carried on business at the time of the assignment. 2. An assignee may be removed, and another substituted, or an additional assignee appointed by the Judge. 3. Where an assignee dies a new assignee may be appointed in the manner provided by subsection 2. 4. Where a new or additional assignee is appointed the estate shall vest in him or in him jointly with his co-assignee without a conveyance or transfer, and he shall register a verified copy of the resolution of the creditors or of the order appointing him in the office in which the assignment was registered. 5. A verified copy of the resolution or of the order may be registered in the proper registry or land titles office and the registration thereof shall have the same effect as the registration of a conveyance.

R. S. O. 1897, c. 147, s. 8 (1, 2); 4 Edw. 7, c. 10, § 33. See §§ 23, 24, and 25, *infra*, and notes thereto, upon questions of proof of claim and rights of creditors to vote. Upon question of remuneration of a removed assignee, see *In re Tilsonburg, Lake Erie & Pacific Railway Company*, (1897), 24 O. A. R. 378. If an assignee dies, a new assignee may be appointed by the creditors.



In re Williams, (1895), 22 O. A. R. 196; For cases where applications were made to remove assignees, see: Orillia, Export Lumber Company v. Burson, (1903), 2 O. W. R. 1110; Brock v. Cline, (1906), 8 O. W. R. 144. Notice of motion to remove an assignee should state the grounds of the application. Re Wilson, (1903), 6 O. L. R. 564.

*Rights of assignee.*

**Rights of assignee. Creditor may proceed in certain cases if assignee refuses.**

12. 1. Except as in this section is otherwise provided, the assignee shall have the exclusive right of suing for the rescission of agreements, deeds, and instruments or other transactions made or entered into in fraud of creditors, or in violation of this Act. 2. Where a creditor desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the estate, and the assignee under the authority of the creditors or inspectors refuses or neglects to take such proceeding after being required so to do, the creditor shall have the right to obtain an order of the Judge authorizing him to take the proceeding in the name of the assignee, but at his own expense and risk upon such terms and conditions as to indemnity to the assignee as the Judge may prescribe, and thereupon any benefit derived from the proceeding shall, to the extent of his claim and full costs, belong exclusively to the creditor instituting the same for his benefit, but if, before such order is obtained, the assignee signifies to the Judge his readiness to institute the proceeding for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, shall belong to the estate.

R. S. O. 1897, c. 147, § 9. The "exclusive right of suing" on the part of the assignee is limited to matters specifically mentioned in the first clause of this section. — Campbell v. Halley, (1895), 22 O. A. R. 217; Doull v. Capman, (1895), 22 O. A. R. 447. This section does not apply to the acts of the assignee. Hence, a creditor may, in his own name, attack a fraudulent sale by the assignee, of the assets of the estate. — Hargrave v. Elliot, (1898), 28 O. R. 152. In Adams v. Watson Manufacturing Company, (1888), 15 O. R. 218; s. c., (1889), 16 O. A. R. 2, it was held that the assignee of a firm of two partners can not attack a security given by these two partners and a third person when previously in partnership with that third person. In Clarkson v. Me Master, (1895), 25 S. C. R. 96, the Court seems to have accorded to the assignee higher rights than those to which the assignor was entitled. But in other cases it has been held that, apart from the special statutory provisions, an assignee under this Act is subject to all the equities affecting the assignor. — See: Lumsden v. Scott, (1883), 4 O. R. 323; Kitching v. Hicks, (1883) 6 O. R. 739; Coats v. Kelly, (1886), 15 O. A. R. 81; see also, Armstrong v. Merchants Mantle Manufacturing Company, (1900), 32 O. R. 387. Where the assignor, while in insolvent circumstances, made a lease with intent to defraud creditors, it was held that a mortgagee of the lands leased, had no right to attack the lease and that such right could only be claimed by the assignee. — Bank of Hamilton v. Anderson, (1904), 8 O. L. R. 153. While an assignee can ratify a fraudulent sale and sue the purchaser for consideration, he can not repudiate the transaction and, at the same time, claim the benefits thereof. — Wood v. Reesor, (1895), 22 O. A. R. 57. *Seemle*, in order that a creditor may proceed, in case the assignee refuses to do so, it is not necessary that his claim be due. — Macdonald v. McCall, (1878), 2 O. A. R. 593; s. c., (1885), 13 S. C. R. 247; Ivey v. Knox, (1885), 8 O. R. 635. If the action is brought by the creditor, with the consent of the assignee, the recovery will be for the benefit of the estate. — Doull v. Kopnam, (1895), 22 O. A. R. 447. The assignee may, in good faith, compromise any claim; and in the absence of fraud or bad faith, (Campbell v. Hally, (1895), 22 O. A. R. 217), no creditor can, thereafter, attack such a compromise. — Keys v. Kirkpatrick, (1890), 19 O. R. 572. Creditors are not prejudiced by acts of an assignee performed in his personal capacity. — MacTavis v. Rogers, (1896), 23 O. A. R. 17.

**Following proceeds of property fraudulently transferred. Taking proceeds under execution. Creditor suing on behalf of himself and other creditors. Protection of innocent purchasers.** 13. 1. In the case of a gift, conveyance, assignment, or transfer of any property, real or personal, which is invalid against creditors, if the person to whom the gift, conveyance, assignment, or transfer was made shall have sold or disposed of, realized, or collected the property or any part thereof, the money or other proceeds may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery, or payment was made, and such right to seize and recover shall belong, not only to an assignee for the general benefit of the creditors 2f the debtor, but where there is no such assignment, to all creditors of the debtor. a. Where there is no assignment for the benefit of creditors, and the proceeds ore of such a character as to be seizable under execution, they may be seized under

the execution of any creditor, and shall be subject to the provisions of *The Creditors' Relief Act*. 3. Where there is no assignment for the benefit of creditors, and whether the proceeds are or are not of such a character as to be seizable under execution, an action may be brought therefor by a creditor, whether an execution creditor or not, on behalf of himself and all other creditors, or such other proceedings may be taken as may be necessary to render the proceeds available for the general benefit of the creditors. 4. This section shall not apply as against innocent purchasers of the property.

R. S. O. 1897, c. 147, § 10. In the absence of the Statute, the proceeds of property fraudulently acquired could not be followed, unless capable of identification. — *Davis v. Wickson*, (1882), 1 O. R. 369; *Stuart v. Tremain*, (1884), 3 O. R. 190; *Robertson v. Holland*, (1888), 16 O. R. 532; *Harvey v. McNaughton*, (1884), 10 O. A. R. 16. But see *Martin v. McAlpine*, (1883), 8 O. A. R. 675. The assignee, or, in a proper case, the creditors, may proceed directly against the person who has received the proceeds; it is not necessary to set aside the transfer. — *Beattie v. Holmes*, (1898), 29 O. R. 264.

**Assignments to take precedence of attachments, etc. 14.** An assignment for the general benefit of creditors under this Act shall take precedence of attachments, garnishee orders, judgments, executions not completely executed by payment, and orders appointing receivers by way of equitable execution subject to the lien, if any, of an execution creditor for his costs where there is but one execution in the sheriff's hands or to the lien, if any, for his costs of the creditor who has the first execution in the sheriff's hands.

3 Edw. 7, c. 7, § 29. Where the sheriff, under a writ of fieri facias, seized the interest of a judgment debtor in certain lands and where, three days prior to the sale, the judgment debtor made an assignment for the benefit of creditors, and where the assignee gave notice to the sheriff of the assignment, but made no tender of the costs incurred, it was held that the assignment did not stand in the way of the sale under the writ of execution and that a subsequent sale by the assignee was void. — *Elliott v. Hamilton*, (1902), 4 O. L. R. 585; 1 O. W. R. 705; 2 O. W. R. 141; following *Gillard v. Millegan*, (1897), 28 O. R. 645. Where one who obtained an assignment of a judgment of foreclosure of a mortgage and who paid the amount due to the mortgagee, the mortgagor having made an assignment before the date fixed for redemption, it was held that the assignee of the mortgagor could only redeem upon payment to the assignee of the judgment, of the total sum due under the mortgage and the judgment assigned to him. — *Scott v. Swanson*, (1907), 38 S. C. R. 229. Where a chattel mortgage was given on the same day as an action was begun by a third party against the mortgagor, the fieri facias having been placed in the sheriff's hand a month later, priority was given to the judgment creditor, the mortgage having been found fraudulent. — *Union Bank v. Schechter*, (1909), 13 O. W. R. 231, 604; see also *Honsinger v. Kunz*, (1909), 14 O. W. R. 233. Where goods in possession of the assignee were destroyed by fire two days after the assignment, the goods having been insured by the assignor, and the policy having been transferred to the assignee, it was held that the landlord of the assignor, to whom the assignor was indebted for rent, which had accrued within one year prior to the date of the assignment, was not entitled to a preferential lien upon the moneys paid to the assignor, even though the landlord could have made the whole of the rent due, by distress at or before the date of the assignment. — *Miller v. Tew*, (1909), 2 O. L. R. 77, distinguishing *In re McCracken* (1879), 4 O. A. R. 466 and *Lazier v. Handerson*, (1898), 29 O. R. 639. For cases involving the preferential rights of landlords, see notes, § 25, *infra*. In *Abraham v. Abraham*, (1890), 19 O. R. 256; s. c. (1891), 18 O. A. R. 436, a judgment for alimony entered against the defendant was held not to be affected by his assignment for the benefit of creditors. In order that an execution be completely executed by payment, it must be paid to the sheriff. — *Clarkson v. Severs*, (1889), 17 O. R. 592; see also, *Carter v. Stone*, (1891), 20 O. R. 340. The first execution creditor has a lien not only for the costs of execution but for the whole costs for which he obtained judgment. — *Clarkson v. Ryan*, (1889), 16 O. A. R. 311; s. c., (1890), 17 S. C. R. 251. Upon the question of lien for costs, see also, *Gillard v. Milligan*, (1897), 28 O. R. 645; *Tremear v. Lawrence*, (1890), 20 O. R. 137.

**Amendment of assignment by Judge. 15.** No advantage shall be obtained by any creditor by reason of any mistake, defect, or imperfection in any assignment under this Act for the general benefit of creditors if the same can be amended or corrected, and any such mistake, defect, or imperfection shall be amended by the Judge on the application of the assignee or of any creditor of the assignor, and on such notice to other parties concerned as the Judge shall think reasonable, and the amendment, when made, shall have relation back to the date of the assignment, but not so as to prejudice the rights of innocent purchasers.

R. S. O. 1897, c. 147, § 12. It was held, in *Blain v. Peaker*, (1889), 18 O. R. 109, that the omission of reference to real property, was not such a mistake or defect as could be remedied by amendment under this section.



*Notice and registration of assignment.*

**Notice of assignment to be published. Assignment to be registered. 16.** 1. A notice of the assignment shall forthwith after the delivery thereof to him or his assent thereto, be published by the assignee at least once in the *Ontario Gazette* and not less than twice in one newspaper having a general circulation in the county or district in which the property assigned is situate. 2. The assignment or a copy thereof shall also within five days from the execution thereof be registered by the assignee, together with an affidavit of a witness thereto of the due execution of the assignment in the office of the clerk of the County or District Court of the county or district in which the assignor, if a resident in Ontario, resided at the time of the execution thereof, or if not a resident then in the office of the clerk of the County or District Court of the county or district where the personal property so assigned or where the principal part thereof is at the time of the execution of such assignment; and the clerk shall number and enter such assignments and endorse thereon the time of receiving the same, and the same shall be open for the inspection of all persons desiring to inspect the same. 3. The clerk shall be entitled to the same fees for services as if the assignment had been registered under *The Bills of Sale and Chattel Mortgage Act*. 4. For the purposes of subsection 2 the Provisional County of Haliburton shall be deemed part of the County of Victoria.

R. S. O. 1897, c. 147, § 13.

**Penalty for neglecting publication or registration. Liability of sheriff. 17.** 1. If the notice is not published as provided by the next preceding section, or if the assignment is not registered within five days from the delivery thereof to the assignee or his assent thereto, the assignee shall incur a penalty of \$ 10 for each and every day during which the default continues. 2. The burden of proving the time of such delivery or assent shall be upon the assignee. 3. Where the assignment is made to a sheriff, he shall not incur the penalty unless he has been paid or tendered the cost of advertising and of registering the assignment, nor shall he be bound to act under the assignment until his costs in that behalf are paid or tendered to him.

R. S. O. 1897, c. 147, § 14.

**Compelling publication and registration. 18.** If the assignment is not registered, or notice thereof is not published, the Judge may, upon the application of any person interested in the assignment, by order enforce the registration of the assignment or the publication of the notice.

R. S. O. 1897, c. 147, § 15.

**Assignment not to be invalidated by omission to publish, etc. 19.** The omission to publish or register as required by section 16 shall not, nor shall any irregularity in the publication or registration, invalidate the assignment.

R. S. O. 1897, c. 147, § 16.

*Meetings of creditors and inspectors.*

**Assignee to call meeting of creditors. 20.** 1. It shall be the duty of the assignee immediately to inform himself, by reference to the assignor and his records of account, of the names and residences of the assignor's creditors, and within five days from the date of the assignment to call a meeting of the creditors for the appointment of inspectors and the giving of directions with reference to the disposal of the estate, by mailing prepaid and registered to every creditor known to him, a notice calling the meeting to be held in his office or some other convenient place to be named in the notice not later than twelve days after the mailing thereof, and by advertisement in the *Ontario Gazette*. 2. All other meetings to be held shall be called in like manner.

R. S. O. 1897, c. 147, § 17.

**Inspectors may be appointed. 21.** 1. The creditors at any meeting may appoint one or more inspectors who shall superintend and direct the proceedings of the assignee in the management and winding-up of the estate and may also at any subsequent meeting for that purpose revoke the appointment of any inspector. 2. Where the appointment of an inspector is revoked or where an inspector dies, resigns his office, or leaves Ontario, the creditors at any meeting may appoint another inspector to take his place. 3. An inspector shall not directly or indirectly purchase any part of the stock-in-trade, debts or other assets of the assignor.

**Meeting of creditors by request of majority thereof. Judge to give directions in case creditors do not attend. 22.** 1. In case of a request in writing signed by a

majority of the creditors having claims duly proved of \$ 100 and upwards, computed according to the provisions of section 24, it shall be the duty of the assignee within two days after receiving such request to call a meeting of the creditors for a day not later than twelve days after he receives the request, and in case of default the assignee shall incur a penalty of \$ 25 for every day after the expiration of the time limited for calling the meeting until it is called. 2. In case a sufficient number of creditors do not attend the meeting mentioned in section 20, or fail to give directions with reference to the disposal of the estate, the Judge may give such directions as he may deem necessary for that purpose.

R. S. O. 1897, c. 147, § 18. If the creditors failed to give directions as to the disposal of the estate, the Judge of the County Court may give such directions. — *Morrison v. Watts*, (1892), 19 O. A. R. 622. The assignee can not, himself, purchase the assets, even with the consent of the inspectors. *Ibid*.

**Voting at meeting. 23.** At any meeting of creditors the creditors may vote in person, or by proxy authorized in writing, but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim stating the amount and nature thereof.

R. S. O. 1897, c. 147, § 19.

**Scale of votes. Upon claims acquired after assignment. Casting vote. Creditors to value securities. Right to re-value in certain cases. When creditor holding security fails to value same. 24.** 1. Subject to the provisions of section 11, all questions at meetings of creditors shall be decided by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows: For every claim of or over \$ 100, and not exceeding \$ 200, 1 vote; For every claim of or over \$ 200, and not exceeding \$ 500, 2 votes; For every claim of or over \$ 500, and not exceeding \$ 1000, 3 votes; For every additional \$ 1,000 or fraction thereof, 1 vote. 2. No person shall be entitled to vote on a claim acquired after the assignment unless the entire claim is acquired, but this shall not apply to persons acquiring notes, bills or other securities upon which they are liable. 3. In case of a tie the assignee or, if there are two assignees, the assignee nominated for that purpose by the creditors, or by the Judge if none has been nominated by the creditors, shall have a casting vote. 4. Every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof; and if such security is on the estate of the assignor, or on the estate of a third person for whom the assignor is only secondarily liable, he shall put a specified value thereon and the assignee under the authority of the creditors may either consent to the creditor ranking for the claim after deducting such valuation, or he may require from the creditor an assignment of the security at an advance of ten per cent. upon the specified value to be paid out of the estate as soon as the assignee has realized such security; and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect of the estate. 5. If a creditor's claim is based upon a negotiable instrument upon which the assignor is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the person primarily liable thereon as being his security for the payment thereof; but after the maturity of such liability and its non-payment, he shall be entitled to amend his claim and revalue his security. 6. Where a person claiming to be entitled to rank on the estate holds security for his claim, or any part thereof, of such a nature that he is required by this Act to value the same, and he fails to value such security, the Judge, upon summary application by the assignee or by any other person interested in the estate, of which application at least three days' notice shall be given to the claimant, may order that, unless a specified value be placed on such security and notified in writing to the assignee within a time to be limited by the order, the claimant shall, in respect of the claim, or the part thereof for which the security is held, in case the security is held for part only of the claim, be wholly barred of any right to share in the proceeds of such estate. 7. If a specified value is not placed on such security, and notified in writing to the assignee according to the exigency of the order, or within such further time as the Judge may by subsequent order allow, the claim, or the part, as the case may be, shall be wholly barred as against such estate but without prejudice to the liability of the assignor therefor.



R. S. O. 1897, c. 147, § 20. In the absence of statute, a creditor can not be compelled to value securities held by him. He may rank for the full amount of his claim and may realize any securities as well, provided that he does not receive, in all, more than the amount of his claim. — *Eastman v. Bank of Montreal*, (1885), 10 O. R. 79; *Molsons' Bank v. Cooper*, (1896), 23 O. A. R. 146. If the security held by the creditor is of such a nature that he is not required to value it, the omission to refer to it does not render the affidavit defective. — *Martin v. McMullen*, (1899), 1 O. A. R. 230. If the security can not be valued when the claim is filed, the claim should be amended as soon as the value of the security is ascertained. — *Wyld v. Clarkson*, (1886), 12 O. R. 589. The creditor need not value, as a security, a guarantee of a debt given by a third person. — *Martin v. McMullen*, (1890), 19 O. R. 230; s. c., (1890), 20 O. R. 257; s. c., (1891), 18 O. A. R. 559. Upon question of the valuation of the liability of the purchaser's estate where the vendor seeks to rank on the guarantor's estate, see: *Wyld v. Clarkson*, (1886), 12 O. R. 589; *Tillie v. Springer*, (1892), 21 O. R. 589. Under the similar section of the *Insolvent Act*, it has been held that the creditor holding security may give it up and prove for the whole claim, or that he may value it and prove for the balance, or that he may keep it and not prove at all. — *Deacon v. Drifil*, (1879), 4 O. A. R. 335; see also, *Re Beatty*, (1880), 6 O. A. R. 40; *Bell v. Ross*, (1885), 11 O. A. R. 658. In *Bell v. Ottawa Trust and Deposit Company*, (1897), 28 O. R. 519, the Court held that a partner who joins as an accommodation maker in a note by the firm, is primarily liable to the holder under subsection 5, and that such holder may rank against his estate without valuing the liability of the firm. A Judge of the High Court of Justice has no jurisdiction to entertain an appeal or give leave to appeal from an order of a County Court, as to the valuation of securities under this section. He should refer such a motion to a Judge of the Court of Appeals. — *In re Aaron Erb*, No. 1, (1908), 16 O. L. R. 554.

### *Proof of claim.*

**Proof of claim. Limiting time for proof of claim. Creditor may prove claim not due.** 25. 1. Every person claiming to be entitled to rank on the estate shall furnish to the assignee particulars of his claim proved by affidavit and such vouchers as the nature of the case admits of. 2. Where a person claiming to be entitled to rank on the estate does not within a reasonable time after receiving notice of the assignment and of the name and address of the assignee, furnish to the assignee satisfactory proofs of his claim as provided by this and the preceding sections, the Judge, upon summary application by the assignee or by any other person interested in the estate, of which application at least three days' notice shall be given to the claimant, may order that unless the claim be proved to the satisfaction of the Judge within a time to be limited by the order, the claimant shall no longer be deemed a creditor of the estate, and shall be wholly barred of any right to share in the proceeds thereof. 3. If the claim is not so proved within the time so limited, or within such further time as the Judge may by subsequent order allow, the same shall be wholly barred, and the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the assignor therefor. 4. The two next preceding subsections shall not interfere with the protection afforded to assignees, by section 38 of *The Trustee Act*. 5. A person whose claim has not accrued due shall nevertheless be entitled to prove under the assignment and to vote at meetings of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time which has to run until the claim becomes due.

R. S. O. 1897, c. 147, § 21. One who has a claim arising out of an action commenced before the assignment and obtains a judgment after the assignment for damages for breach of contract or for slander, is not entitled to rank. The debt, forming the basis of the claim, must be either actually due or payable in futuro. — *Grant v. West*, (1896), 23 O. A. R. 533; *Gurofski v. Harris*, (1896), 27 O. R. 201; see also *Ashley v. Brown*, (1890), 17 O. A. R. 500; *Magann v. Ferguson*, (1898), 29 O. R. 235. As to whether a creditor is entitled to rank for rights under a conditional contract where the condition has not been satisfied at the time of the consignment, see *Mail Printing Company v. Clarkson*, (1898), 25 O. A. R. 1; reversing s. c., (1897), 28 O. R. 236. The Crown has no priority in rank. — *Clarkson v. Attorney General of Canada*, (1889), 16 O. A. R. 202. Neither has a domestic creditor any preference over a foreign creditor. — *Milni v. Moore*, (1894), 24 O. R. 456. An assignee, who is also a creditor, may rank. — *Robinson v. Cook*, (1884), 6 O. R. 590. A *cestui que trust* has no preference in the estate of his trustee unless the trust fund can be identified. — *Culhane v. Stuart*, (1884), 6 O. R. 97. A principal is entitled to money or goods intrusted to his agent if such money or goods are in the hands of his agent at the time of the assignment. — *Long v. Carter*, (1896), 23 A. R. 121; s. c., (1896), 26 S. C. R. 430. As to when a surety may rank upon the estate of his principal, see: *Martin v. McMullen*, (1890), 19 O. R. 230; s. c., (1890), 20 O. R. 257; s. c., (1891), 18 O. A. R. 559; see also *Young v. Spiers*, (1888), 16 O. R. 672. In *Pett v. Attwood*, (1907), 9 O. W. R. 178, the Court allowed the wife of an insolvent to rank upon his estate in the hands of an assignee upon a claim for the value of property conveyed by the wife to the husband. For other cases involving the rights of rela-

tives of the assignee, see: *Re Miller*, (1877), 1 O. A. R. 393; *Totten v. Bowen*, (1882), 8 O. A. R. 602; *Warner v. Murray*, (1889), 16 S. C. R. 720. In an action by the father of an insolvent to rank on the estate as a creditor, it was held that, under a contract of the insolvent to pay the father a certain sum in the event of the insolvent's selling land, the assignment was not equivalent to a sale. — *Ryan v. Malone*, (1908), 11 O. W. R. 575. In an action to establish a right to prove and rank upon an estate for the value of a certain amount which the insolvent, before the date of the assignment, covenanted to pay quarterly during his life, it was held that such payments were in their nature contingent debts, and were not provable under this Act. — *Carswell v. Langley*, (1902), 3 O. L. R. 261; 1 O. W. R. 107, following *Grant v. West*, (1896), 23 O. A. R. 533 and *Mail Printing Company v. Clarkson*, (1898), 25 O. A. R. 1. A tenant who holds under a lease containing a covenant against an assignment, may be ejected, without notice, upon an assignment for the benefit of creditors. — *Argles v. McMath*, (1894), 26 O. R. 224; s. c., (1896), 23 O. A. R. 44. But there must be an election to forfeit. — *Palmer v. Mail Printing Co.*, (1897), 28 O. R. 656; *Linton v. Imperial Hotel Company*, (1889), 6 O. A. R. 337. Upon the question of waiver of right of the landlord to claim a forfeiture, by the acceptance of rent from the assignee after the assignment, see *Loper v. Littlejohn*, (1901), 31 S. C. R. 572; reversing s. c., (1901), 1 O. L. R. 172. An assignee of part of the reversion can not enforce the right of forfeiture. *Mitchell v. McCauley*, (1893), 20 O. A. R. 272. In the absence of chattels upon which a distress can be levied, the landlord ranks as an ordinary creditor. — *Linton v. Imperial Hotel Company*, *supra*; *In re Hoskins*, (1877), 1 O. A. R. 379; *In re McCracken*, (1879), 4 O. A. R. 486. *In re Hoskins*, *supra*, decided under the *Insolvency Act* of 1875, it was held that a provision in a lease for acceleration of payments, was a fraud upon creditors. But, see *Baker v. Atkinson*, (1886), 11 O. R. 735; s. c., (1887), 14 O. A. R. 409. *In Semi-Ready Limited v. Tew*, (1909), 19 O. L. R. 247; 13 O. W. R. 476; 14 O. W. R. 393, a claim made by a lessor on an assignment for the benefit of creditors, to rank as a preferred creditor under an acceleration clause in the lease was denied. See also, *Bessemer Gas Engine v. Mills*, (1904), 18 O. L. R. 647. For further cases, upon the question of the landlord's right to rank as a creditor for rent due under an acceleration clause, see: *Linton v. Imperial Hotel Company*, *supra*; *Graham v. Lang*, (1885), 10 O. R. 248; *Clark v. Reed*, (1896), 27 O. R. 618. *Semble*, a landlord can not rank on a claim for future rent. — *Grant v. West*, (1896), 23 O. A. R. 533; *Connolly v. Coon*, (1896), 23 O. A. R. 37. *In re Hart v. Ontario Express Company*, (1892), 22 O. R. 510. The effect of the *Landlord and Tenant Act*, R. S. O., 1897, c. 170, is to place the assignee who has elected, by notice in writing, to retain the premises occupied by the assignor at the time of the assignment for the unexpired term of the lease, in the same position, as respects the lease, as the assignor would have been in had not the assignment been made. — *Kennedy v. McDonald*, (1901), 1 O. L. R. 250. *In Regan v. Langley*, (1908), 12 O. W. R. 1101, plaintiff was allowed to rank as a preferential creditor for wages and as an ordinary creditor for money advanced and for wages earned prior to the sixty days' period. If a creditor neglects to prove his claim, the assignee should not ignore it but should call upon such creditor to furnish proof. — *Carling Brewing & Malting Co. v. Black*, (1884), 6 O. R. 441. Although an assignee who gives notice to a creditor, pursuant to the statute, is protected, *semble*, an unpaid creditor who has failed to file his claim, has a right to enforce contribution from other creditors. Cp. rule of distribution of estates of deceased persons. — *Chamberlen v. Clark*, (1882), 9 O. A. R. 273. Claims allowed under subsection 5 are those in which the debts are owing but not presently payable. — *Mail Printing Company v. Clarkson*, (1898), 25 O. A. R. 1. For example, a debt payable in annual instalments would be provable under this subsection. — *Tillie v. Springer*, (1892), 21 O. R. 585.

**Contestation of claim.** 26. 1. At any time after the assignee receives from any person claiming to be entitled to rank on the estate proof of his claim, notice of contestation of the claim may be served by the assignee upon the claimant. 2. Within thirty days after the receipt of the notice, or within such further time as the Judge may allow, an action shall be brought by the claimant against the assignee to establish the claim, and a copy of the writ in the action or of the summons in case the action is brought in a Division Court shall be served on the assignee; and in default of such action being brought and writ or summons served within the time limited, the claim to rank on the estate shall be forever barred. 3. The notice by the assignee shall contain the name and place of business of a solicitor, upon whom service of the writ or summons may be made; and service upon him shall be deemed sufficient service.

R. S. O. 1897, c. 147, § 22. The right to contest a claim may be lost by laches on the part of the assignee. — *Bell v. Ross*, (1885), 11 O. A. R. 458. *In re Hague*, *Traders Bank v. Murray*, (1887), 13 O. R. 727, it was held that a claim which had passed into judgment before the assignment, could not be contested. But see: *Bowerman v. Phillip*, (1888), 15 O. A. R. 679; *Allan v. McTavish*, (1891), 18 O. A. R. 440; *Young v. Ward*, (1897), 24 O. A. R. 147, decided under the *Imperial Bankruptcy Act*, in which judgments fraudulently obtained were contested. A creditor who brings an action to establish his claim is limited, in his recovery, to the claim set up in his affidavit and his judgment should direct merely a declaration of the right to rank; not an absolute recovery. — *Grant v. West*, (1896), 23 O. A. R. 533. Under subsection 2, it was held in *Johnston v. Burns*, (1893), 23 O. R. 582 that failure to bring an action within the prescribed



time merely forfeits the claimant's right of action against the estate, but does not bar the right to set off the claim against the purchaser from the assignee, of a debt alleged to be due by the claimant.

**Procedure where assignee is satisfied with proof of claim and debtor desires to dispute same.** 27. 1. If the assignee is satisfied with the proof adduced in support of a claim, but the assignor disputes the same, the assignor shall do so by notice in writing to the assignee, stating the grounds upon which he disputes the claim; and such notice shall be given within ten days after the assignor is notified in writing by the assignee that he is satisfied with the proof adduced and not afterwards unless by leave of the Judge. 2. If upon receiving such notice of dispute the assignee does not deem it proper to require the claimant to bring an action to establish his claim, he shall notify the assignor in writing of the fact, and the assignor may thereupon, and within ten days of his receiving such notice, apply to the Judge for an order requiring the assignee to serve a notice of contestation. 3. The order shall be made only if after notice to the assignee the Judge is of opinion that there are good grounds for contesting the claim. 4. If the assignor does not make such an application the decision of the assignee shall, as against him, be final and conclusive. 5. If upon the application the claimant consents in writing, the Judge may, in a summary manner, decide the question of the validity of the claim. 6. If an action is brought by the claimant against the assignee, the assignor may intervene at the trial, either personally or by counsel for the purpose of calling and examining or cross-questioning witnesses.

R. S. O. 1897, c. 147, § 23.

*Disposal of assets of estate.*

**Assets not to be removed out of the Province and moneys to be deposited in a bank.** Penalty. 28. 1. No property or assets of an estate assigned under the provisions of this Act shall be removed out of Ontario without the order of the Judge, and the proceeds of the sale of any such property or assets, and all moneys received on account of any estate shall be deposited by the assignee in an incorporated bank within Ontario, and shall not be withdrawn or removed without the order of the Judge, except in payment of dividends and charges incidental to winding up the estate. 2. An assignee or any person acting in his stead who violates the provisions of this section shall incur a penalty of \$500. 3. One-half of the penalty shall go to the person suing therefor, and the other half shall belong to the estate. 4. In default of payment of the penalty and all costs incurred in any action or proceeding for the recovery thereof, within the time limited by the judgment, the Court in which the action is brought may order that such assignee or person may be imprisoned for any period not exceeding thirty days, and such assignee or person shall be disqualified from acting as assignee of any estate while such default continues.

R. S. O. 1897, c. 147, § 24.

**Accounts to be kept accessible.** 29. Upon the expiration of one month from the first meeting of creditors, or as soon as may be thereafter, and afterwards from time to time at intervals of not more than three months, the assignee shall prepare, and keep constantly accessible to the creditors, accounts and statements of his doings as such assignee, and of the position of the estate.

R. S. O. 1897, c. 147, § 25. As to the duty of the assignee to prepare and furnish accounts and statements to the creditors, see: *Randall v. Borrows*, (1865), 11 Grant, 364; *Sandford v. Porter*, (1889), 16 O. A. R. 565.

**Set-off.** 30. The law of set-off shall apply to all claims made against the estate and also to all actions instituted by the assignee for the recovery of debts due to the assignor, in the same manner and to the same extent as if the assignor were plaintiff or defendant, as the case may be, except in so far as any claim for set-off shall be affected by the provisions of this or any other Act, respecting frauds or fraudulent preferences.

R. S. O. 1897, c. 147, § 26. The fundamental principles of set-off, viz., that the debt sought to be set off must be owing to a person in the same capacity as the claim, upon which he is sued, is due from him, governs in set-offs under this Act. — *Graham v. Toms*, (1877), 25 Grant, 184. A judgment debtor of the assignor may set-off, as against the judgment rendered in favour of the assignor before the assignment, a debt due by the assignor to him. — *Moody v. Canadian Bank of Commerce*, (1891), 14 O. P. R. 258. A holder of claims against the assignor, bought up at a discount before the assignment, may set off the full amount of such claims against a debt owing to the assignor. — *Thibaudeau v. Garland*, (1896), 27 O. R. 39. A chattel mortgage may set-off an unsecured debt against the claim of the mortgagor's assignee, to surplus proceeds.

of the sale of mortgaged goods. — *Stephens v. Boisseau*, (1896), 26 S. C. R. 437; affirming s. c., (1896), 23 O. A. R. 230.

**Dividends when to be paid.** 31. As large a dividend as can with safety be paid, shall be paid by every assignee within twelve months from the date of the assignment and earlier if required by the inspectors; and thereafter a further dividend shall be paid every six months, and more frequently if required by the inspectors until the estate is wound up and disposed of.

R. S. O. 1897, c. 147, § 28. Failure to distribute the estate within a year, casts upon the assignee, in the absence of special difficulties, the burden of justifying the delay. — *Ontario Bank v. Lamont*, (1883), 6 O. R. 147. In *Lucas v. Tegart*, (1903), 2 O. W. R. 458, an action by a creditor against the assignee, in which the plaintiff alleged that no dividends had been paid and charged that the assignor had converted assets of the estate, the Court ordered the funds in the hands of the assignee to be distributed.

**Notice of dividend sheet.** 32. So soon as a dividend sheet is prepared, notice thereof shall be given by registered letter to each creditor, inclosing an abstract of receipts and disbursements, shewing what interest has been received by the assignee for moneys in his hands, together with a copy of the dividend sheet, noting thereon the claims objected to, and stating whether any reservation has or has not been made therefor; and after the expiry of eight days from the date of mailing such notice, abstract and dividend sheet, dividends on all claims not objected to within that period shall be paid.

R. S. O. 1897, c. 147, § 29. The assignee is liable for interest from the time payment of dividends should have been made. — *Brock v. Tew*, *Falconbridge*, J. April 5th, 1898. See also: *McCollough v. Newlove*, (1896), 27 O. R. 627; *McCollough v. Clemow*, (1895), 26 O. R. 467; *City of London v. Citizens Insurance Company*, (1887), 13 O. R. 713. A creditor's right to call the assignee to account for funds alleged to have been misappropriated is not waived by the receipt of a dividend. — *Morrison v. Watts*, (1892), 19 O. A. R. 622; *Bemmer v. Oliver*, (1884), 10 O. A. R. 656. But, see *Miller v. Hamlin*, (1883), 2 O. R. 103.

**Distributing moneys and determining claims as provided by 9 Edw. VII. c. 48.** 33. 1. The assignee may take the proceedings authorized by section 33 of *The Creditors Relief Act* to be taken by a sheriff, and in that case sections 33 and 34 of that Act shall apply mutatis mutandis to proceedings for the distribution of moneys and determination of claims arising under an assignment made under this Act, with the substitution of "assignee" for "sheriff"; but this section shall not relieve the assignee from mailing to each creditor the abstract and other information required by section 32 of this Act to be sent to creditors, so far as the same is not contained in the list sent by him under section 33 aforesaid. 2. A Judge of the County or District Court of the county or district where the assignment is required to be registered shall be the Judge to whom applications under this section shall be made.

R. S. O. 1897, c. 147, § 30.

*Remuneration of assignee and inspectors.*

**Remuneration of assignee.** 34. The assignee shall receive such remuneration as shall be voted to him by the creditors at any meeting called for the purpose after the first dividend sheet has been prepared, or by the inspectors, in case the creditors fail to provide therefor, subject to review by the Judge upon complaint of the assignee or of any creditor.

R. S. O. 1897, c. 147, § 31. The principles regulating remuneration of ordinary trustees should govern in the case of assignees. — *Archer v. Severn*, (1887), 13 O. R. 316; *In re Prittie Trusts*, (1887), 13 O. P. R. 19; see also, *In re Central Bank, Lye's Claim*, (1892), 22 O. R. 247. An assignee is not entitled to charge against the estate, costs paid by him in an action, not authorized by creditors, to set aside a chattel mortgage. — *Hyman v. Howell*, (1887), 13 O. R. 400. If a general investigation of the accounts is desired, an action is necessary; but in *Stewart v. Miller*, November 22nd, 1897, *Boyd, C.*, held that it was improper to bring an action merely for the purpose of settling the question of remuneration.

**Where remuneration not fixed before the final dividend.** 35. Where the remuneration of the assignee has not been fixed under the next preceding section before the final dividend, the assignee may insert in the final dividend sheet, and retain as his remuneration, a sum not exceeding five per cent. of the cash receipts, subject to review by the Judge; but no application by the assignee to review the allowance shall be entertained unless the question of his remuneration has been brought before a meeting of creditors competent to decide the same before the preparation of the final dividend sheet.

R. S. O. 1897, c. 147, § 32



**Remuneration of inspectors. 36.** 1. An assignee shall not make any payment or allowance to an inspector beyond his actual and necessary travelling expenses in and about his duties as inspector, except under the authority of a resolution of the creditors passed at a meeting regularly called, fixing the amount thereof, and in the notice calling the meeting the fixing of the remuneration of the inspectors shall be specially mentioned as one of the subjects to be brought before the meeting. — 2. An inspector shall not be allowed more than four dollars a day besides actual travelling expenses.

R. S. O. 1897, c. 147, § 33. For powers of inspectors defined in this Act, see §§ 31 and 34, *supra*, and § 37, *infra*. Inspectors are in the nature of trustees for the creditors, so that they can not purchase the estate without the consent of the creditors. — *Morrison v. Watts*, (1892), 19 O. A. R. 622; see also, *Thompson v. Clarkson*, (1891), 21 O. R. 421. Neither can they make a profit at the expense of the estate. — *Segsworth v. Anderson*, (1894), 26 O. R. 573; s. c., (1894), 21 O. A. R. 242; s. c., (1894), 24 S. C. R. 699. *Seemle*, an inspector may act as solicitor for the estate. — *Strachan v. Ruttan*, (1892), 15 O. P. R. 109; *In re Mimico Sewer Pipe & Brick Manufacturing Company*, *Pearson's case*, (1895), 26 O. R. 289.

*Examination of assignor and others.*

**Examination of assignor or employees. 37.** 1. Upon a resolution passed by a majority vote of the creditors present or represented at a meeting of creditors regularly called, or upon the written request of a majority of the inspectors, or upon an order made by the Judge, the assignee may examine upon oath before a Master, Local Master, Local Registrar, Deputy Clerk of the Crown of the High Court, Judge of the County or District Court, Special Examiner, Official Referee, or any other person named in the order, the assignor or any person who is or has been his agent, clerk, servant, officer, or employee of any kind touching the estate and effects of the assignor and as to the property and means he had when the earliest of his debts or liabilities existing at the date of the assignment was incurred and as to the property and means he still has of discharging his debts and liabilities and as to the disposal he has made of any property since contracting such debt or incurring such liability and as to any and what debts are owing to him, and the person examined may be required by the assignee to produce upon such examination any property, book, document, or paper in his custody, power or control. 2. Unless otherwise ordered the examination shall take place in the county or district within which the person to be examined resides. 3. The Rules and procedure of the High Court as to the examination of a judgment debtor or any clerk or employee or former clerk or employee of a judgment debtor, shall, so far as may be, apply to an examination held under subsection 1.

R. S. O. 1897, c. 147, §§ 34 and 35. On an examination of an assignor under this section, it is sufficient to serve a copy of the appointment of the special examiner upon the assignor; it is not necessary to show him the original appointment unless sight of it is demanded. — *In re Ferguson*, (1908), 17 O. L. R. 576; 12 O. W. R. 1143.

**Examination of persons having custody of property of assignor. 38.** Any person who has or is believed or suspected to have in his possession or power any book, document, or paper of any kind relating in whole or in part to the assignor, his dealings or property, and who refuses or fails to procedure the same for the inspection of the assignee within four days after demand in writing by the assignee may by order of the Judge be examined before the Judge or any of the officers mentioned in section 37 touching such book, document, or paper and he shall be subject to the same consequences in the case of neglect to attend or refusal to disclose the matters in respect of which he may be examined or to make such production as are mentioned in section 40.

R. S. O. 1897, c. 147, § 39.

**When assignor does not attend or refuses to answer questions. 39.** If the assignor does not attend for examination and does not allege a sufficient excuse for not attending, or if attending, he refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or if it appears from such examination that assignor has concealed or made away with his property in order to defeat or defraud his creditors or any of them, the Judge may order the assignor to be committed to the common gaol of the county or district in which he resides, for any period not exceeding twelve months.

R. S. O. 1897, c. 147, § 36. For a case where the assignor was committed for refusal to disclose property and transactions and for fraudulent disposal of his property, see *Re McLarty*, (1908), 12 O. W. R. 1171.

**Compelling attendance and production of books. 40.** Any person other than the assignor liable to be examined shall be subject to the same consequences in case of neglect to attend or refusal to disclose the matters in respect of which he may be examined or to make production as a witness in an action in the High Court.

R. S. O. 1897, c. 147, § 38.

**Repeal. 41.** Chapter 147 of the Revised Statutes, 1897, and all amendments thereto are repealed.

## VIII. Prince Edward Island.

### Law in force.

The common law of England, except as modified by Imperial Acts in force in the Province or by Dominion or local Acts is in force.

### Statutes.<sup>1)</sup>

#### Partnership.

##### a) Acts, 1862, c. 13. An Act relating to Limited Partnerships (17th April, 1862).

[1—15. Two or more persons may form a limited partnership for the transaction of any mercantile, mechanical, or manufacturing business, except banking or insurance. General partners are liable as in ordinary partnership; special partners are not personally liable. A certificate must be signed by the partners setting forth the names of the general and special partners, distinguishing between them, the amount of capital contributed by the special partners, the general nature of the partnership business, and the time when the partnership is to commence and terminate. The certificate must be acknowledged before a justice of the peace, and registered, and a copy published for three months in the *Royal Gazette*. Where a partner withdraws a certificate must be drawn up, acknowledged, registered, and published in a similar manner. The name of a special partner must not form part of the firm name. Capital stock must not be withdrawn nor a division of profits made so as to reduce the capital below that mentioned in the certificate. Special partners participating in such improper division must refund. Assignments in case of insolvency must be for the benefit of all creditors. Suits by or against the partnership are to be in the names of the general partners, except that in cases where a special partner has incurred the liability of a general partner such special partner may be made a party defendant. Dissolution, except by operation of law, must be effected by a certificate made and registered as in the case of the original certificate, and published for six weeks in the *Royal Gazette*.]

##### b) Acts, 1876, c. 8. An Act relating to Partnerships (29th April, 1876).

[1—10. All partnerships engaged in mercantile, mechanical, or manufacturing business, except banking or insurance, must be registered. A certificate must be drawn up containing the firm name, the names and residences of the partners, the general nature of the business, and the time when the partnership is to com-

<sup>1)</sup> As in force 1st January, 1912.



mence and when it shall terminate. The certificate must be made in the presence of witnesses, and be registered in a book kept for that purpose, and open to public inspection. An unregistered partnership can not recover in any suit. Withdrawals by partners and a dissolution of the firm in any manner other than by operation of law, as well as any change in the partnership by the addition of new members must be registered in the same manner. But an incoming partner is liable for firm debts even though no certificate filed.]

### Companies.

#### a) Acts, 1888, c. 14. The Prince Edward Island Joint Stock Companies Act (28th April, 1888).<sup>1)</sup>

[1—88. The Lieutenant-Governor in council may grant a charter to any number of persons not less than five, who may petition therefor, to form a company for any purposes to which the legislative authority of the Province extends, except the construction and working of railroads, the business of insurance, or the management of trades unions, friendly societies, building societies and other associations of like character. The applicants must give two weeks' notice by publication in the *Royal Gazette*, setting forth the proposed name, the object, the place of business, the amount of capital stock (which shall not be less than \$ 500 actually subscribed,) the number of shares and the amount of each share, the full names, address, and calling of the applicants, with special mention of the names of not less than three of their members who are to be the first or provisional directors of the company. Within one month after the last publication of such notice the applicants may petition for the issue of letters patent, setting forth in such petition the facts contained in the notice, and further stating the amount of stock taken by each applicant and also the amount, if any, paid in upon the stock of each applicant. The aggregate of the stock so taken must be at least half of the total amount of the stock of the company. The petition must also state whether the amount is paid in cash or by transfer of property, or how otherwise. The publication of the notice is dispensed with where the capital stock of the company does not exceed \$ 5000. Notice of the granting of the letters patent is published in the *Royal Gazette*. A company so incorporated may hold and convey real estate, subject to the conditions set forth in the letters patent, in so far as such real estate is necessary for the carrying on of the undertaking of the company. The name of the company may be changed by the issue of supplementary letters patent. By a resolution passed by a vote of at least two-thirds in value of the total shareholders of the company at a special general meeting called for the purpose the company may apply for supplementary letters patent, extending the powers of the company to other purposes and objects. The affairs of every company must be managed by a board of not less than three directors. Directors must be shareholders in their own right and to the amount required by the by-laws of the company, and must not be in arrears in respect of any calls thereon. Directors are elected annually and, in default of express provisions to the contrary, all the members of the board retire annually, but are eligible for re-election. Notice of the time and place for holding general meetings must be given at least fourteen days prior thereto by publication. The officers of the company are elected by the directors. The number of directors may be increased or decreased. The directors may, subject to the letters patent, regulate the allotment of stock, the making of calls thereon, the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, the transfer of stock, the declaration and payment of dividends, the time and place of meeting and other matters. The issue of stock at a greater discount than what had been previously authorized at a general meeting is invalid and may not be acted upon until the same has been confirmed at the annual meeting or at a general meeting duly called for that purpose. One-fourth part in value of the shareholders may de-

<sup>1)</sup> As amended by Acts, 1889, c. 12.

mand the calling of a special meeting. After the whole capital stock of the company has been taken up and fifty per cent. thereon paid in the directors of the company may make a by-law for increasing the capital stock. The directors may also make by-laws for decreasing the capital stock. By-laws for increasing or decreasing the capital stock or subdividing the shares must be sanctioned by a vote of not less than two-thirds in value of the shareholders at a general meeting of the company duly called for the purpose and afterwards confirmed by supplementary letters patent. Shares are personal estate. The directors may from time to time make calls on shares. Not less than ten per cent. upon the allotted stock of the company, must be called in within one year from the date of incorporation. No shares are transferable until all previous calls have been fully paid in and the directors may decline to register any transfer of shares belonging to any member who is indebted to the company. Shareholders in arrears in respect of calls are not entitled to vote at any meeting of the company. Shareholders are individually liable to the creditors of the company to an amount equal to that not paid up on the shares. Companies may not use their funds in the purchases of stock of any other company unless expressly authorized by by-law confirmed at a general meeting. The watering of stock is prohibited.]

**b) Acts, 1883, c. 11. An Act relating to the Acts of the Dominion Parliament respecting Insolvent Banks, Insurance Companies, Loan Companies, Building Societies, and Trading Corporations (27th April, 1883).**

[1—2. Orders of a Court or Judge for the payment of moneys or costs, charges or expenses, shall be deemed a judgment of the Supreme Court of the Province, and upon a minute thereof being registered in the Prothonotary's Office bind property in the Province.]

**c) Acts, 1895, c. 1. An Act to provide for the Incorporation of Cheese and Butter Manufacturing Associations (5th April, 1895).**

[Five or more persons may incorporate for the purpose of manufacturing cheese and butter. Such company has the ordinary powers of a company. No member may own shares in excess of \$ 1000. The capital stock must be not less than \$ 1000 nor more than \$ 20 000. At least \$ 1000 must be subscribed before operations are commenced. The liability of shareholders is limited to the unpaid balance on shares.]

**d) Acts, 1906, c. 19. An Act respecting Returns of certain Corporations, Associations, and Companies (21st April, 1906).**

[This Act requires corporations, associations, and companies receiving subsidies from the Provincial Government to make annual financial statements.]

**Bills of Lading.**

**Acts, 1860, c. 23. An Act to amend the Laws relating to Bills of Lading (2d May, 1860).**

[1—3. These sections are identical with those contained in the Imperial Act, 18 & 19 Vic. c. 111.]



## Assignments.

### Acts, 1898, c. 4. An Act respecting Assignments for the Benefit of Creditors (14th May, 1898).<sup>1)</sup>

[1—28. Confessions of judgment, cognovits actionem, or warrants of attorney to confess judgment given by an insolvent debtor with intent to defeat or delay creditors or to give a preference to any creditor are void as against creditors. Similarly, assignments of goods made with similar intent are void. The intent to delay or defeat creditors is presumed if the effect of the assignment is to prefer one creditor to others, if the action to impeach the assignment be brought within sixty days. The fact that the assignment was made under pressure is not a defence. Assignments made to innocent purchasers for present value are protected, as are also payments to a creditor where such creditor, by reason or on account of such payment, has lost or been deprived of, or has in good faith given up, any valid security held for the payment of the debt so paid, unless the value of the security is restored to the creditor. If an assignor executing an assignment for the general benefit of his creditors owes debts, both individually and as a member of a partnership the claims shall rank first upon the estate by which the debts they represent were contracted. The wages or salaries of persons in the employment of the assignor at the time of making the assignment or within one month before the making thereof are given a priority to the extent of three months' wages or salary. A similar priority is accorded to farmers in respect of the price of products of such farmers' farms sold to the assignor during the three months immediately preceding the date of the assignment. The assignee must call a meeting of creditors. Creditors may vote in person or by proxy. The Act fixes a scale of votes for the purpose of ascertaining a majority.]

## IX. Quebec.

### Law in force.

Prior to the cession to England (1763) the law in force in Quebec consisted of the Coutume de Paris, and the Ordinances in force within the jurisdiction of Paris, the Arrêts de Conseil du Roi and the Ordinances proclaimed between 1663 and 1763, in so far as they had been registered in Quebec, the local ordinances, and the judgments of the Courts. The old law was continued in force as regards civil matters by an Act of 1774. A Civil Code was enacted in 1866<sup>2)</sup>.

### Statutes.<sup>3)</sup>

#### Partnership.

##### a) Civil Code.<sup>4)</sup>

#### *Title Eleventh. Of Partnership.*

##### *Chapter First. General Provisions.*

**1830.** It is essential to the contract of partnership that it should be for the common profit of the partners, each of whom must contribute to it property, credit, skill, or industry.

C. N. 1832, 1833.

<sup>1)</sup> As amended by Acts, 1899, c. 14. — <sup>2)</sup> Burge, Colonial and foreign law, Vol. I, p. 229, 230. — <sup>3)</sup> As in force 1st January, 1912. — <sup>4)</sup> The references (C. N.) are to the corresponding article of the Code Napoleon.

**1831.** Participation in the profits of a partnership carries with it an obligation to contribute to the losses. Any agreement by which one of the partners is excluded from participation in the profits is null. An agreement by which one partner is exempt from liability for the losses of the partnership is null only as to third persons.

C. N. 1855.

**1832.** If no time for the commencement of the partnership be designated, it takes effect from the date of the contract.

C. N. 1843.

**1833.** If the term of the partnership be not designated it is considered to be for the life of the partners; subject to the provisions contained in the fifth chapter of this title.

C. N. 1892, 1895; C. C. 1895.

**1834.** In partnerships for trading, manufacturing, or mechanical purposes, or for the construction of roads, dams, and bridges, or for the purpose of colonization, or of settlement, or of land traffic, the partners must deliver to the prothonotary of the Superior Court in each district, and to the registrar of each county, in which they carry on business, a declaration in writing, in the form and subject to the rules provided in the statute intituled: An Act respecting Partnerships. The omission to deliver such declaration does not render the partnership null; it subjects the contravening parties to the penalties and liabilities imposed by the statute.

Vide R. S. Q. 1909, §§ 7437—7445.

**1834a.** A similar declaration must be also made by any person carrying on business alone under a firm name.

**1835.** The allegations contained in the declaration mentioned in the last preceding article, can not be controverted by any person who has signed the same, nor can they be controverted, as against any party being a partner, by a person who has not signed but was really a member of the partnership at the time the declaration was made; and no partner, whether he has signed or not, is deemed to have ceased to be a partner until a new declaration has been made and filed as aforesaid, stating the alteration in the partnership.

**1836.** Any partner, although not mentioned in the declaration, may be sued jointly and severally with the partners mentioned therein, or the latter may be sued alone, and, if judgment be recovered against them, any other partner or partners may be sued on the original cause of action on which such judgment was rendered.

**1837.** When persons are associated as partners in Lower Canada for any of the purposes mentioned in article 1834, and no declaration has been filed as aforesaid, any action which might be brought against all the members of the partnership, may also be brought against any one or more of them, as carrying on or as having carried on trade jointly with others, without naming such others in the writ or declaration, under the name and style of their partnership firm, and if judgment be recovered against him or them, any other partner or partners may be sued jointly or severally on the original cause of action on which such judgment has been rendered; but when any such action is founded on an obligation or instrument in writing in which all or any of the partners bound by it are named, then all the partners named therein must be made parties to such action.

**1838.** The service of summons or process, for any claim or demand founded upon any liability of an existing partnership, at the office or place of business of such partnership within the province of Canada, has the same effect as a service made upon the members of such partnership personally, and any judgment rendered against any member of such existing partnership, for a partnership debt or liability, may be enforced by process of execution against the partnership property in the same manner as if the judgment had been rendered against the partnership.

C. C. P., 122, 139.

## *Chapter Second. Of the Obligations and Rights of Partners among Themselves.*

**1839.** Each partner is a debtor to the partnership for all that he has agreed to contribute to it. When such contribution consists of a certain thing and the partnership is evicted of it, the partner is subject to warranty in the same manner as a seller is in favor of the buyer.

C. N. 1845; C. C. 1508 et seq.

**1840.** A partner who fails to pay any sum of money which he has agreed to contribute to the partnership is liable for interest on such sum from the day of his



default. [He is also liable for interest upon any sum taken by him from the partnership funds for his particular benefit, from the day that he has withdrawn it.

C. C. 1846.

**1841.** The provisions contained in the last two preceding articles are without prejudice to the rights of the other partners to damages against the partner in default, and to obtain a dissolution of the partnership, according to the rules contained in the title of obligations and in article 1896.

**1842.** A partner can not carry on privately any business or adventure which deprives the partnership of a portion of the skill, industry, or capital, which he is bound to employ therein. If he do so, he is obliged to account to the partnership for the profits of such business.

C. N. 1847.

**1843.** When a partner is creditor individually of a person who is also indebted to the partnership, and both debts are actually payable, the imputation of any payment received by him from the debtor, is made upon both debts in proportion to their respective amounts, although by the receipt, he may have imputed it upon his private debt only; but if by the receipt he impute the payment wholly upon the partnership debt, such imputation is to be maintained.

C. N. 1848.

**1844.** When a partner has been paid his full share of a debt due to the partnership, and the debtor becomes insolvent, such partner is obliged to return to the partnership what he has received, although he may have given a discharge specially for his part.

C. N. 1849.

**1845.** Each partner is liable to the partnership for damages caused by his fault. He can not set up in compensation of such damages the profits which the partnership has derived from his industry in other affairs.

C. N. 1850.

**1846.** A certain and determinate thing which does not consume by use, and of which the enjoyment only is contributed to the partnership, is at the risk of the partner who is the owner of it. Things which consume by use or deteriorate by keeping, or which are intended to be sold, or are contributed to partnership at a fixed valuation, are at the risk of the partnership.

C. N. 1851; C. C. 1893.

**1847.** A partner has a right against the partnership not only to recover money disbursed by him for it, but also to be indemnified for obligations contracted by him in good faith in the business of the partnership, and for the risks inseparable from his management.

C. N. 1852.

**1848.** When there is no agreement concerning the shares of the partners in the profits and losses of the partnership, they share equally.

C. N. 1853.

**1849.** A partner charged with the management of the business of the partnership by a special clause in the contract, may perform all acts connected with his management, notwithstanding the opposition of the other partners, provided he act without fraud. Such power of management can not be revoked without sufficient cause, while the partnership continues; but if the power be given by an instrument posterior to the contract of partnership, it is revokable in the same manner as a simple mandate.

C. N. 1856.

**1850.** When several of the partners are charged with the management of the business of the partnership generally, and without a provision that one of them shall not act without the others, each of them may act separately; but if there be such a provision, one of them can not act in the absence of the others, although it be impossible for the latter to join in the act.

C. N. 1857, 1858.

**1851.** If there be no special stipulation as to the management of the business of the partnership, the following rules apply: 1. The partners are presumed to have mutually given to each other a mandate for the management, and whatever is done by one of them binds the others; saving the right of the latter, together or separately, to object to any act before it is concluded; 2. Each partner may use the things belonging to the partnership, provided he apply them to their customary and destined use, and that he do not use them against the interest of the partnership, or in a

manner to prevent his co-partners from making use of them according to their right; 3. Each partner may compel his co-partners to bear with him the expenses which are necessary for the preservation of the property of the partnership; 4. One of the partners can not make alterations in the immoveable property of the partnership without the consent of the others, although he should establish that such alterations are advantageous.

C. N. 1859.

**1852.** A partner who has no right of management can not alienate or otherwise dispose of anything which belongs to the partnership; saving the rights of third persons as hereinafter declared.

C. N. 1860.

**1853.** Each partner may, without the consent of his co-partners, associate with himself a third person in the share he has in the partnership. He can not without such consent associate him in the partnership.

C. N. 1861.

### *Chapter Third. Of the Obligations of Partners toward Third Persons.*

**1854.** Partners are not jointly and severally liable for the debts of the partnership. They are liable to the creditor in equal shares, although their shares in the partnership may be unequal. This article does not apply in commercial partnerships.

C. N. 1862, 1863; C. C. 1105, 1873.

**1855.** A stipulation that the obligation is contracted for the partnership binds only the partner contracting when he acts without the authority, express or implied, of his co-partners, unless the partnership is benefited by his act, in which case all the partners are bound.

C. N. 1864.

**1856.** The liabilities of partners for the acts of each other are subject to the rules contained in the title of Mandate, when not regulated by any article of this title.

### *Chapter Fourth. Of the different Kinds of Partnerships.*

**1857.** Partnerships are either universal or particular; they are also either civil or commercial.

C. N. 1835.

#### *Section I. Of Universal Partnerships.*

**1858.** Universal partnership may be either of all the property or of all the gains of the partners.

C. N. 1836.

**1859.** In universal partnership of property, all the property of the partners, moveable and immoveable, and all their gains, as well present as future, are put in common.

C. N. 1837.

**1860.** Parties contracting a universal partnership are presumed to intend only a partnership of gains, unless the contrary is expressly stipulated.

C. N. 1839.

**1861.** In a universal partnership of gains is included all that the partners acquire by their industry in whatever employment they are engaged during the continuance of the partnership. The moveable property and the enjoyment of the immoveables possessed by the partners at the date of the contract are also included; but the immoveables themselves are not included.

C. N. 1838.

#### *Section II. Of Particular Partnerships.*

**1862.** Particular partnerships are those which apply only to certain determinate objects. A partnership contracted for a single enterprise or for the exercise of any art or profession is also a particular partnership.

C. N. 1811, 1842.

#### *Section III. Of Commercial Partnerships.*

**1863.** Commercial partnerships are those which are contracted for carrying on any trade, manufacture, or other business of a commercial nature, whether general or limited to a special branch or adventure. All other partnerships are civil partnerships.



**1864.** Commercial partnerships are divided into: 1. General partnerships; 2. Anonymous partnerships; 3. Partnerships en commandite, or limited partnerships; 4. Joint stock companies. They are governed by the rules common to other partnerships, when these are not inconsistent with the rules contained in this section, and with the laws and usages specially applicable in commercial matters.  
C. N. 1873, C. C. 1854.

### § 1. *Of General Partnerships.*

**1865.** General partnerships are those contracted for the purpose of carrying on business under a collective name or firm consisting ordinarily of the names of the partners or of one or more of them, all of whom are jointly and severally liable for the obligations of the partnership.

**1866.** The partners may make such stipulations among themselves concerning their respective powers in the management of the partnership business as they see fit, but with respect to third persons dealing with them in good faith, each partner has an implied power to bind the partnership for all obligations contracted in its name and in its general course of dealing and business.

**1867.** The partners are liable for obligations contracted by one of them, in his own name, only when the obligation is for objects which are in the usual course of dealing and business of the partnership, or are applied to its use.

**1868.** Dormant or unknown partners are, during the continuance of the partnership, subject to the same liabilities toward third persons as ordinary partners under a collective name.

C. C. 1900, § 5.

**1869.** Nominal partners, and persons who give reasonable cause for the belief that they are partners, although not so in fact, are liable as such to third parties dealing in good faith under that belief.

C. C. 1730.

### § 2. *Of Anonymous Partnerships.*

**1870.** In partnerships having no name or firm, whether they are general or confined to a single object or adventure, the partners are subject to the same liabilities in favour of third persons as in ordinary partnerships under a collective name.

### § 3. *Of Partnerships en commandite or Limited Partnerships.*

**1871.** Partnerships en commandite, or limited partnerships, for the transaction of any mercantile, mechanical, or manufacturing business, other than the business of banking and of insurance, may be formed under the statute intituled: *An Act Respecting Limited Partnerships.*

See R. S. Q. § 7443. *infra.*

**1872.** Such partnerships consist of one or more persons called general partners, and of one or more persons who contribute in cash payments a specific sum or capital to the common stock and who are called special partners.

**1873.** The general partners are jointly and severally responsible in the same manner as ordinary partners under a collective name; but special partners are not liable for the debts of the partnership beyond the amount contributed by them to the capital.

**1874.** The general partners only can be authorized to transact business and sign for the partnership, and to bind the same.

**1875.** Persons contracting limited partnerships are bound to make and severally sign a certificate containing: 1. The name or firm of the partnership; 2. The general nature of the business to be carried on; 3. The names of all the general and special partners, distinguishing which are general and which special, and their usual place of residence. 4. The amount of capital stock contributed by each special partner. 5. The period at which the partnership commences and that of its termination. Such certificate is to be made, filed, and recorded in the form and manner prescribed in the statute specified in article 1871.

**1876.** The partnership is not deemed to be formed until the certificate is made, filed, and recorded, as indicated in the last preceding article.

**1877.** If any false statement be made in the certificate, all the persons interested in the partnership are liable for its obligations, in the same manner as ordinary partners under a collective name.

1878. In case of any renewal or continuance of the partnership beyond the time originally fixed for its duration, a certificate thereof must be made, filed, and recorded in the manner required for the original formation. Any partnership otherwise renewed or continued is deemed a general partnership.

1879. Every alteration in the name of the general partners, in the nature of the business, or in the capital or shares, or in any matter, other than the name of the special partners, specified in the original certificate, is deemed a dissolution of the partnership; and if it be carried on after such alteration, it is deemed a general partnership, unless renewed as a limited partnership in the manner provided in the last preceding article.

C. C. 1892, s. 9.

1880. The business of the partnership is to be conducted under a partnership name or firm, in which the name of the general partners only, or of one or more of them, is used; and if the name of a special partner be used in the firm with his privity, he is deemed a general partner.

1881. Suits in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there were no special partners.

1882. No part of the sum which any special partner has contributed to the capital stock can be withdrawn by him or paid or transferred to him in the form of dividends, profits, or otherwise, during the continuance of the partnership; but he may annually receive lawful interest on the sum so contributed by him, if the payment of such interest do not reduce the original amount of the capital and he may also receive his portion of the profits.

1883. If by the payment of interest or supposed profits the original capital be reduced, the partner receiving the same is bound to restore the amount necessary to make good his share of the deficient capital with interest.

1884. A special partner may, from time to time, examine into the state and progress of the affairs of the partnership, and may advise as to its management; but he can not transact any business on account of the partnership, not be employed by it as agent, attorney, or otherwise. If he act in contravention of the provisions of this article, he is deemed a general partner.

1885. The general partners are liable to account to each other and to the special partners for the management of the business of the partnership, in the same manner as ordinary partners under a collective name.

1886. In case of the insolvency or bankruptcy of the partnership, no special partner is allowed, under any circumstances, to claim as a creditor, until the claims of all the other creditors of the partnership have been satisfied.

1887. No dissolution of the partnership by the acts of the parties can take place previously to the time specified in the certificate of its formation, or the certificate of its renewal, until notice of such dissolution has been filed and published in the manner provided in the act specified in article 1871.

1888. Partnerships for the business of banking are regulated by special Acts of incorporation, and by the federal Act respecting banks and banking.

R. S. Q. 6241; C. C. 367.

#### *Chapter Fifth. Of the Dissolution of Partnership.*

1892. Partnership is dissolved: 1. By the efflux of time; 2. By the extinction or loss of the partnership property; 3. By the accomplishment of the business for which it was contracted; 4. By bankruptcy; 5. By the death of one of the partners; 6. By the civil death, or interdiction, or bankruptcy, of one of the partners; 7. By the will of one or more of the partners, not to continue the partnership, according to articles 1895 and 1896; 8. By the business of the partnership becoming impossible or unlawful. Limited partnerships are also determined by the causes declared in article 1879, to which article the causes of dissolution declared in the above paragraphs 5 and 6 are subjected. The causes of dissolution declared in paragraphs 5, 6, 7 do not apply to joint stock companies formed under the authority of a royal charter or of an Act of the legislature. Commercial partnerships are also terminated by judgment maintaining, at the instance of a creditor of one of the partners, the seizure of such partner's share in the stock of partnership, or at the instance of one of the partners after such seizure.

C. N. 1865; 60 V. c. 50, § 32; C. C. P. 698.



**1893.** When one of the partners has promised to put in common the property in a thing, the loss of such thing before the contribution of it has been made, dissolves the partnership with respect to all the partners. The partnership is equally dissolved by the loss of the thing when only the enjoyment of it is put in common, and the property of the thing remains with the partner. But the partnership is not dissolved by the loss of the thing of which the property has already been brought into the partnership; unless such thing constitutes the whole capital stock of the partnership or is so important a part of it that the business of the partnership can not be carried on without it.

C. M. 1867.

**1894.** It may be stipulated that in case of the death of one of the partners, the partnership shall continue with his legal representative, or only between the surviving partners. In the latter case, the representative of the deceased partner is entitled to a division of the partnership property, only as it exists at the time of the partner's death. He can not claim the benefit of any transaction subsequent thereto, unless such transaction is a necessary consequence of something done before the death occurred.

C. N. 1868.

**1895.** Those partnerships only which are not limited as to duration can be dissolved at the will of any one of the partners, by a notice to all the others of his renunciation. Such renunciation must be in good faith, and not made at a time unfavourable for the partnership.

C. N. 1869; C. C. 1833.

**1896.** The dissolution of a partnership limited as to duration may be demanded by one of the partners before the expiration of the stipulated term, upon just cause shown, or when another partner fails to fulfill his engagement, or is guilty of gross misconduct, or from habitual infirmity or physical impossibility is unable to attend to the business of the partnership, or when his condition and status are essentially changed, and in other cases of a like nature.

C. N. 1871; C. C. 1841.

**1896a.** If a partnership be dissolved or a judicial demand be made for such dissolution, the court or the judge, upon the demand of one of the partners, after notice given to the others, has power to appoint one or more liquidators. The liquidators so appointed must be sworn to well and faithfully perform the duties of their office. They immediately give notice of their appointment by an advertisement to that effect published in the *Quebec Official Gazette*, and in two newspapers, one in the French and the other in the English language, published at the place of business of the partnership or at the nearest place, and in such other manner as the Court or Judge may prescribe. They become pleno jure seized of the assets of the partnership for the purposes of the liquidation; they furnish the security prescribed by the Court or Judge, and are in all respects subject to the summary jurisdiction of such Court or Judge. They possess all the powers and are subjected to all the obligations of judicial sequestrators, with the exception of the putting into possession, which is done without the intermediary of a bailiff. Acts, exceeding those of administration, cannot be performed by the liquidators without the consent of all the partners, and in default of such consent, only with the approval of the court or judge, after previous notice to the members of the partnership. The remuneration of the liquidators is fixed by the Court or Judge. Proceedings respecting the appointment of liquidators and the performance of the duties of their office are summary. Provisional execution takes place notwithstanding the appeal, saving the right of the Court to which the cause is taken in appeal to summarily suspend such execution. Two Judges of the Court seized of the appeal may also give such order for suspension after notice to the adverse party.

#### *Chapter Sixth. Of the Effects of Dissolution.*

**1897.** The mandate and powers of the partners to act for the partnership cease with its dissolution, except for such acts as are a necessary consequence of business already begun; nevertheless whatever is done in the usual course of dealing and business of the partnership, by a partner acting in good faith and in ignorance of the dissolution, binds the other partners, in the same manner as if the partnership still subsisted.

**1898.** Upon the dissolution of the partnership, each partner or his legal representative may demand of his co-partners an account and partition of the property of the partnership; such partition to be made according to the rules relating to the partition of successions, in so far as they can be made to apply. Nevertheless, in commercial partnerships these rules are to be applied only when they are consistent with the laws and usages specially applicable in commercial matters.

C. N. 1872; C. C. 689 et seq.; C. C. P. 1037 et seq.

**1899.** The property of the partnership is to be applied to the payment of the creditors of the firm, in preference to the separate creditors of any partner; and in case such property be found insufficient for the purpose, the private property of the partners, or of any one of them is also to be applied to the payment of the debts of the partnership; but only after the payment out of it, of the separate creditors of such partners or partner respectively.

C. C. 1991.

**1900.** The dissolution of a partnership by the terms of the contract, or the voluntary act of the partners, or by the expiration of time or by the death or retirement otherwise of a partner, does not affect the rights of third persons dealing afterwards with any of the partners on account of the partnership firm; except in the cases following: 1. When notice is given as required by law or the usage of trade; 2. When the partnership is limited to a particular enterprise or adventure which is terminated before the transaction takes place; 3. When the transaction is not within the usual course of dealing and business of the partnership; 4. When the transaction is in bad faith or illegal, or otherwise void. 5. When the partner sought to be charged is a dormant or unknown partner, to whom no credit is actually given, and who has retired before the transaction takes place.

## b) Registration of Partnerships.

§ 1. *Declaration to be made by Persons entering into Partnership for certain Purposes.*

**Declaration to be made by persons associated in partnership for certain purposes.**

**Contents of declaration. When to be filed. Declaration in case of alteration in membership. 7437.** 1. The declaration to be transmitted to the prothonotary and Registrar under the Civil Code by all persons associated in partnership, in the Province, for trading, manufacturing, or mechanical purposes, or for purposes of construction of roads, dams, bridges, or other works, or for purposes of colonization, or of settlement, or of land traffic, shall be signed by the several members of such partnership, and if any of the said members be absent from the Province at the time, then by the members present, in their own names and for their absent co-members, under their special authority to that effect. 2. Such declaration shall be according to form A and shall contain the names, surname, addition and residence of every partner, and the name, style, or firm, under which they carry on or intend to carry on such business. 3. It shall state the time during which the partnership has existed, and declare that the persons therein named are the only members of such partnership. 4. Such declaration shall be filed within sixty days after the formation of the partnership, and a similar declaration shall be filed in like manner when and so often as any change or alteration takes place in the membership thereof, or in the name, style, or firm under which they intend to carry on business.

R. S. Q. § 5635.

**Declaration not to be registered if name similar to another firm. If made, may be annulled. 7438.** No such declaration can be registered, if it gives to any partnership the name, style, or firm name of an existing partnership, or a name, style, or firm name so similar that the public may be led into error. Every registration made contrary to the provisions of this article, may be annulled by the Superior Court of the district, upon petition of which notice has been given to the parties interested, to the prothonotary and to the registrar.

R. S. Q. § 5635a; 61 Vic., c. 42, § 1.

§ 2. *Declarations to be made by Persons making Use of a Firm Name.*

**Declaration to be made by trader who uses a style indicating a plurality of members. Form and contents of declaration. When declaration to be made. Changes to be re-**



**gistered. 7439.** 1. Every person who, not being associated in partnership with any other person, for the purposes mentioned in article 7437, uses alone, or uses with his own name as his business style, some name, or designation other than his own name alone, or uses his own name with the addition of "and company," or some other word or phrase indicating a plurality of members under the said style, must also transmit a declaration, according to form B, containing the name, surname, quality, and residence of such person, and the style, or firm name under which he carries on or intends to carry on business, and state that no other person is associated with him. 2. Such declaration shall be deposited within sixty days of the time when such style is first used. 3. All changes in the style mentioned in such registered declaration, shall also be registered in the same manner; and so also when the person ceases carrying on business under such style or using such style so registered.

R. S. Q. § 5636.

**Entry of declaration. Fees, etc., thereon. Fee on certificate. 7440.** The prothonotary and the Registrar shall enter such declaration in a book which they shall keep for that purpose, which book shall, at all times during office hours, be open to public inspection free of charge. Each of such officials may require from the person delivering such declaration, the sum of fifty cents for registering it, if it does not contain more than two hundred words, and the sum of five cents for each additional hundred words. The fee shall be the same for every certificate required and delivered.

R. S. Q. § 5637.

**Indexes to be kept by Registrar and prothonotary. 7441.** In the case of declarations registered in conformity with article 7439, two indexes, according to form C shall be kept by the prothonotary and Registrar, in which they shall enter, as soon as received, according to alphabetical and filing order: in the first column of one of such books, the firm name mentioned in the declarations delivered to them; in the second column, the name of the person; in the third column the date of the receipt of the declaration; in the first column of the other index the name of the person; in the second column, the style; and, in the third column, the date of the filing of the same.

R. S. Q. § 5638.

### § 3. Penalties.

**Penalty for not complying with provisions of this section. Application of penalty. Other provisions applicable to this section. 7442.** Every member of a partnership, or person doing business under a co-partnership style, failing to comply with the provisions of this section or of the third paragraph of article 1834 of the Civil Code, is liable to a fine of one hundred dollars, to be recovered before any court of competent civil jurisdiction by any person suing therefor. One half of such fine belongs to the Crown, for the uses of the Province, and the other half to the party suing for the same, unless the suit be brought on behalf of the Crown alone, in which case the whole of the penalty belongs to His Majesty, for the uses aforesaid. The provisions of the law respecting penal actions apply to suits for penalties under this section.

R. S. Q. § 5639; 9 Edw. 7. c. 61. § 2.

### Forms.

#### A. (Article 7437.)

##### Partnership Declaration.

Province of Quebec, {  
District of {

We, \_\_\_\_\_ of \_\_\_\_\_ in \_\_\_\_\_, (grocers, or as the case may be) hereby certify that we (have carried on and) intend to carry on trade and business as (grocers or as the case may be), at \_\_\_\_\_, in partnership under the name and firm of \_\_\_\_\_ (or, as the case may be), or I (or we) the undersigned, of \_\_\_\_\_ hereby certify that I (or we) (have carried on and) intend to carry on trade and business as \_\_\_\_\_ at \_\_\_\_\_ in partnership with C. D., of \_\_\_\_\_ and E. F., of \_\_\_\_\_, and that the said partnership has subsisted since the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and that we (or I or we and the said C. D. and E. F.), are and have been since the said day the only members of the said partnership.

Witness our hands, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
(Signatures)

**B. (Article 7439.)***Declaration of Sole Trader.*

Province of Quebec, }  
 District of }

I                      of                      in                      (grocer, or, as the case may be) hereby  
 certify that I carry on and that I intend to carry on business as (grocer, or, as the case may be),  
 at                      , district of                      , under the style of                      and that no  
 other person is associated with me.

(Signature)

**C. (Article 7441.)***Alphabetical Index of Firm Name*

Firm.	Name of the Person.	Date of Filing.
Abbott & Co.	John Bernard	March 22nd, 1885.
Bourgouin & Lamontagne	Louis Bourgouin	March 23rd, 1885.
Roy & Dion	Joseph Roy	March 24th, 1885.

*Alphabetical Index of Surnames*

Name of the Person.	Firm.	Date of Filing.
Bernard, John	Abbott & Co.	March 22nd, 1885.
Bourgouin, Louis	Bourgouin & Lamontagne	March 23rd, 1885.
Roy, Joseph	Roy & Dion	March 24th, 1885.

**§ 4. Certificates of Formation of Limited Partnerships.**

**Form of certificate under article 1875 of Civil Code. 7443.** The certificate of the formation of limited partnerships, mentioned in article 1875 of the Civil Code, shall be signed by the several persons forming such partnership, before a notary, who shall duly certify the same in the following form, namely:

"We, the undersigned, do hereby certify that we have entered into copartnership under the style or firm of (*B. D. & Co.*), as (*grocers and commission merchants*), which firm consists of *A. B.* residing usually at                      , and *C. D.* residing usually at                      , as general partners, and *E. F.* residing usually at                      , and *G. H.* residing usually at                      , as special partners, the said *E. F.* having contributed                      and the said *G. H.*                      to the capital stock of the said partnership; which said copartnership commenced on the                      day of                      , one thousand nine hundred and                      , and terminates on the                      day of                      , one thousand nine hundred and                      .  
 Dated at                      , this                      day of                      one thousand nine hundred and                      .

A. B.  
 C. D.  
 E. F.  
 G. H.

Signed in my presence,

L. M.,  
 Notary."

**Certificate where to be filed. Registration. 7444.** The certificate shall be filed in the offices of the prothonotary of the district and of the registrar of the county in which the principal place of business of the partnership is situated. It shall be recorded at length in a book to be kept by them for that purpose and open to public inspection.

R. S. Q. § 5641.

**Fees to be paid on filing etc. 7445.** Each of such officers shall receive, for filing every such certificate of formation or renewal, and for recording the same, the sum of fifty cents.

R. S. Q. § 5642.



## Companies.

### a) Civil Code.

#### *Title eleventh. Of Corporations.*

##### *Chapter First. Of the Nature and Creation of Corporations, and of their different Kinds.*

**352.** Every corporation legally constituted is an artificial or ideal person, whose existence and succession are perpetual, or sometimes for a fixed period only, and which is capable of enjoying certain rights and liable to certain obligations.

**353.** Corporations are constituted by act of Parliament, by royal charter, or by prescription. Those corporations also are reputed to be legally constituted which existed at the time of the cession of the country and which have been since continued and recognized by competent authority.

**354.** Corporations are aggregate or sole. Corporations aggregate are those composed of several members; corporations sole are those consisting of a single individual.

**355.** Corporations are either ecclesiastical or religious, or they are lay or secular. Ecclesiastical corporations are aggregate or sole. They are all public. Secular corporations are either aggregate or sole. They are either public or private.

**356.** Secular corporations are further divided into political and civil; those that are political are governed by the public law, and only fall within the control of the civil law in their relations, in certain respects, to individual members of society. Civil corporations constituting, by the fact of their incorporation ideal or artificial persons, are as such governed by the laws affecting individuals; saving the privileges they enjoy and the disabilities they are subjected to.

##### *Chapter Second. Of the Rights, Privileges, and Disabilities of Corporations.*

###### *Section I. Of the rights of corporations.*

**357.** Every corporation has a corporate name, which is given to it at its creation or which has since been recognized and approved by competent authority. Under such name the corporation is known and designated, sues and is sued, and does all its acts and exercises all the rights which belong to it.

**358.** The rights which a corporation may exercise, besides those specially conferred by its title, or by the general laws applicable to its particular kind, are all those which are necessary to attain the object of its creation; thus it may acquire, alienate, and possess property, sue and be sued, contract, incur obligations, and bind others in its favour.

**359.** For these objects, every corporation has the right to select from its members officers whose number and denominations are determined by the instrument of its creation or by its by-laws or regulations.

**360.** These officers represent the corporation in all acts, contracts or suits, and bind it in all matters which do not exceed the limits of the powers conferred on them. These powers are either determined by law, by the by-laws of the corporation, or by the nature of the duties imposed.

**361.** Every corporation has a right to make, for its internal government, for the order of its proceedings and for the management of its affairs, by-laws and regulations which its members are bound to obey, provided they are legally and regularly passed.

###### *Section II. Of the Privileges of Corporations.*

**362.** Beside the special privileges which may be granted to each corporation by its title of creation or by special law, there are others which result from the fact of incorporation and which exist of right in favour of all corporate bodies, unless taken away, restrained or modified by such title or by law.

**363.** The principal of these privileges is that which limits the responsibility of the members of a corporation to the interest which each possesses therein, and exempts them from all personal liability for the payment of obligations contracted by the corporation within the scope of its powers and with the formalities required.

### *Section III. Of the Disabilities of Corporations.*

**364.** Corporations are subject to particular disabilities which either prevent or restrain them from exercising certain rights, powers, privileges, and functions, which natural persons may enjoy and exercise; these disabilities arise either from their corporate character or they are imposed by law.

A corporation is responsible in damages for libel. — *Brown v. Mayor of Montreal*, (1871), 17 L. C. J. 46. An action for libel may be brought by one corporation against another corporation. — *L'Institut Canadien v. Le Nouveau Monde*, (1873), 17 L. C. J. 296.

**365.** In consequence of the disabilities which arise from their corporate character, they can neither be tutors nor curators, nor can they take part in meetings of family councils. They can not be entrusted with the execution of wills or any other administration which necessitates the taking of an oath or imposes personal responsibility. They can not be summoned personally, nor appear in court otherwise than by attorney. They can not sue nor be sued for assaults, battery or other violence to the person. They can not serve as witnesses nor as jurors before the courts. They can neither be guardians nor judicial sequestrators, nor can they be charged with any other functions or duties the exercise of which might entail imprisonment.

**366.** The disabilities arising from the law are: 1. Those which are imposed on each corporation by its title, or by any law applicable to the class to which such corporation belongs. 2. Those comprised in the general laws of the country respecting mortmains and bodies corporate, prohibiting them from acquiring immoveable property or property so reputed, without the permission of the crown, except for certain purposes only, and to a fixed amount or value. 3. Those which result from the same general laws imposing, for the alienation or hypothecation of immoveable property held in mortmain or belonging to corporate bodies, particular formalities, not required by common law.

Modern civil corporations established for commercial and trading purposes, as joint stock companies or incorporated banking, manufacturing, or railway companies can not be considered mortmain corporations, nor do the restrictions placed by law on such corporations apply to them. — *Kierzkowski v. Grand Trunk Railway Company of Canada*, (1857), 4 L. C. R. 3; s. c., (1859), 10 L. C. R. 47; The provisions of the Code of Civil Procedure Arts 364—366 are general and apply to all corporations without distinction. Therefore, a building society incorporated by the Dominion Parliament, to carry on operations through the Dominion, is subject to disability imposed by C. C. 366, and can not acquire immovable property in the Province of Quebec without the permission of the Crown or the authority of the local legislature. — *Cooper v. McIndoe*, (1887), 15 Rev. Leg. 276, M. L. R., 7 Q. B. 481; affirming s. c., (1885), M. L. R., 2 S. C. 388. The Code contains no restrictions as to bequests in favour of corporations, to be thereafter formed; and as to devises, the prohibitions contained in articles 366 and 836 relate to the acquisition of immovable property by corporations already formed. A devise, by which property is given, not to trustees with power of perpetual succession, but simply to trustees directed to convey to a corporation only in the event of its being lawfully created, with permission to possess it, is not within the scope of said articles. — *Abbott v. Fraser*, (1874), 20 L. C. J. 197, 6 Rev. Leg. 365.

**366a.** All corporations which, under the provisions of their charters or of the law, can not acquire real estate, except to a limited amount, have the right, whenever they dispose of or alienate any real estate belonging to them, to apply the price thereof to the acquisition of other real estate, and also to receive the revenues thereof and to employ the same for the objects for which they were constituted.

**367.** All corporations are prohibited from carrying on the business of banking unless they have been specially authorized to do so by their title of creation.

### *Chapter Third. Of the Dissolution of Corporations and the Liquidation of their Affairs.*

#### *Section I. Of the Dissolution of Corporations.*

**368.** Corporations are dissolved: 1. By any act of the legislature declaring their dissolution. 2. By the expiration of the term or the accomplishment of the object for which they were formed, or the happening of the condition attached to their creation. 3. By forfeiture legally incurred. 4. By the natural death of all the members, the diminution of their number, or by any other cause of a nature to interrupt the corporate existence, when the right of succession is not provided for in such cases. 5. By the mutual consent of all the members, subject to the modifications and under the circumstances hereinafter determined. 6. By voluntary liquidation in the cases by law provided.



A Judge in chambers has no jurisdiction to appoint a curator to a dissolved corporation until its dissolution has been judicially pronounced in due course of law. — *In re Montreal Patent Guano Company*, (1874), 18 L. C. J. 129.

**369.** Ecclesiastical and secular corporations of a public nature, other than those formed for the mutual assistance of their members, can not be dissolved by mutual consent without a formal and legal surrender or the authority of the legislature, as the case may be. The same rule applies to banks, to railway, canal, telegraph, toll-bridge, and turnpike companies, and generally to private corporations who have obtained privileges which are exclusive or exceed those resulting by law from incorporation.

**370.** Public corporations formed for the mutual assistance of their members, and those of a private nature not included in the preceding article, may be dissolved by mutual consent, on conforming to the conditions, which may have been specially imposed on them, and saving the rights of third parties.

## *Section II. Of the Liquidation of the Affairs of dissolved Corporations.*

**371.** Saving the case of the voluntary liquidation of joint stock companies, a dissolved corporation is, for the liquidation of its affairs, in the same position as a vacant succession. The creditors and others interested have the same recourse against the property which belonged to it, as may be exercised against vacant successions and the property belonging to them.

Although an incorporated company has ceased to do business and has ceased to elect directors for carrying it on, the rights of creditors to execute their judgments against the company are not impaired. — *Hughes v. Lalonde*, (1889), 18 Rev. Leg. 205. Whatever may be the state of disorganization into which a company has fallen, the creditors are entitled to exercise their rights against it and the shareholders. — *Hughes v. La Cie. de Villas du Cap Gibraltar*, (1889), 34 L. C. J. 245 affirming s. c., (1889), M. L. R., 5 S. C. 129.

**372.** In order to facilitate such recourse, a curator who represents such corporation and is seized of the property which belonged to it, is appointed by the proper court with the formalities observed in the case of vacant estates.

**373.** Such curator must be sworn; he must give security and make an inventory. He must also dispose of the moveables, and must proceed to the sale of the immoveable property, and to the distribution of the price between the creditors and others entitled to it, in the manner prescribed for the discussion, distribution and division of the property of vacant estates to which a curator has been appointed, and in the cases and with the formalities required by the Code of Civil Procedure.

**373a.** In the case of the voluntary liquidation of a joint stock company, one or more liquidators are appointed in the manner required by law, for the purpose of winding up the affairs and of distributing the assets of the company.

## *§ 4. Of Joint Stock Companies.*

**1889.** Joint stock companies are formed either under the authority of a royal charter, or of an act of the legislature, and are governed by its provisions; or they are formed without such authority, and, in the latter case, are subject to the same general rules as partnerships under a collective name.

**1890.** The names of the partners or stockholders do not appear in joint-stock companies, which are generally known under an appellation indicating the object of their formation. The business is carried on by directors or other mandataries, who are appointed from time to time, according to the rules established for the governance of such companies respectively.

**1891.** Any seven or more persons may in like manner associate themselves together for the purpose of carrying on any labor, trade or business, except the working of mines, minerals, or quarries, and the business of banking or insurance, in conformity with the provisions of the Act of 1865, intituled an Act to authorize the formation of companies or co-operative associations for the purpose of carrying on, in common, any trade or business. The formation and governance of joint-stock companies and corporations for particular objects are provided for by special statutes.

## b) Revised Statutes, 1909.<sup>1)</sup>

### *Joint Stock Companies' General Clauses.*

#### § 1. *Declaratory and Interpretative.*

**Short title. 5957.** This section may be cited as the *Joint Stock Companies' General Clauses Act*.

R. S. Q. § 4651; Imp. § 295.

**Interpretation. 5958.** The following expressions, both in this section and in the charter, have the following meanings, unless the subject matter or context otherwise requires: 1. The expression "the charter" means any act incorporating a company for any of the purposes contemplated by this section. 2. The expression "the company" means the company incorporated by the charter; 3. The expression "the undertaking" means the whole of the works and business of every kind, which the company is authorized to carry on. 4. The expression "real estate" or "land" includes immoveable property of every kind. 5. The expression "shareholder" or "stockholder" means every subscriber to, or holder of, stock in the company, and extends to and comprises the personal representatives of the shareholder.

R. S. Q. § 4652; Imp. § 285.

**To what companies section applies. Exception. 5959.** When not otherwise expressly enacted, this section shall apply to every joint stock company incorporated by any charter, for any of the purposes within the jurisdiction of the Legislature, except for the construction and working of railways and the business of insurance.

R. S. Q. § 4653; 56 Vic. c. 35, § 1.

**It forms part of charter. 5960.** The provisions of this section, even although not specially inserted in the charter shall, save in so far as they are expressly varied or excepted by such charter, be construed as if formally embodied and reproduced therein.

R. S. Q. § 4654.

#### § 2. *General Powers.*

**Corporate powers. 5961.** Every company incorporated for any of the above purposes under any charter, is a corporation under the name declared in such charter, and may acquire, hold, alienate, and convey, all real estate requisite for the carrying on of the undertaking, and is invested with all the powers, privileges, and immunities requisite to carry into effect the intentions and objects of this section and of the charter, and which are incident to such corporation, or expressed or included in the law respecting the interpretation of statutes.

R. S. Q. § 4655.

**Such powers to be subject to present section. 5962.** All powers given by the charter to the company are subject to the provisions and restrictions contained in this section.

R. S. Q. § 4656.

**Directors. 5963.** The affairs of the company shall be managed by a board of not less than three, or more than fifteen directors.

R. S. Q. § 4657; 4 Edw. 7, c. 31, § 1.

**First directors. 5964.** The persons named as such in the charter shall be the directors of the company, until duly replaced. If not so replaced within six months from the date of the incorporation of the company, any of said persons or, if they be not living, their heirs or assigns, may cause a meeting to be held by giving fifteen clear days' notice of the time and place thereof, in the *Quebec Official Gazette*, and the said persons, or their heirs or assigns, present at such meeting, may pass by-laws, allot stock, and elect directors.

R. S. Q. § 4658; 7 Edw. 7, c. 47, § 1.

**Qualifications of after directors. 5965.** No person shall be elected or appointed a director thereafter, unless he be a shareholder, owning stock absolutely in his own right, and not in arrears in respect of any call thereon. The majority of the after directors of the company shall, further, at all times, be persons resident in Canada, and subjects of His Majesty by birth or naturalization.

R. S. Q. § 4659.

<sup>1)</sup> The references in the notes are to the Quebec Statutes indicated and (Imp.) to the Imperial *Companies (Consolidation) Act, 1908*, (8 Edw. 7, c. 69).



**Election of directors. 5966.** The after directors of the company shall be elected by the shareholders, in general meeting of the company assembled, at such times and manner, and for such term not exceeding two years, as the charter, or, in default thereof, the by-laws of the company, may prescribe.

R. S. Q. § 4660.

**Elections not expressly provided for to be yearly. Notice. Right to vote. Ballot. Vacancies. President. Other officers. 5967.** In the absence of other express provisions in such behalf, in the charter or the by-laws of the company: 1. Such election shall take place yearly, all the members of the board retiring, and, if otherwise qualified, being eligible for re-election. 2. Notice of the time and place for holding general meetings of the company shall be given at least ten days previous thereto, in some newspaper published at or as near as may be to the office or chief place of business of the company. 3. At all general meetings of the company, every shareholder shall be entitled to as many votes as he owns shares in the company, and may vote by proxy. 4. Elections of directors shall be by ballot. 5. Vacancies occurring in the board of directors may be filled for the remainder of the term, by the board from among the qualified shareholders of the company. 6. The directors, from time to time, shall elect from among themselves a president of the company, and also name, and remove at pleasure, all other officers thereof.

R. S. Q. § 4661.

**Provision in case of failure of election. 5968.** If at any time an election of directors be not made or do not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the company duly called for that purpose; and the retiring directors shall continue in office until their successors are elected.

R. S. Q. § 4662.

### § 3. *Directors.*

**Powers of directors. By-laws for certain purposes. 5969.** 1. The directors have full power in all things to administer the affairs of the company, and may make or cause to be made for the company, any kind of contract which the company may lawfully enter into. 2. They may, from time to time, make by-laws not contrary to law, to regulate: a) The allotment of stock; b) The making of calls thereon; c) The payment of calls; d) The issue and registration of certificates of stock; e) The forfeiture of stock for non-payment; f) The disposal of forfeited stock and of the proceeds thereof; g) The transfer of stock; h) The declaration and payment of dividends; i) The number of directors and their term of service; j) The amount of their stock qualification; k) The appointment, functions, duties, and removal of all agents, officers, and servants of the company; l) The security to be given by them to the company; m) Their remuneration and that (if any) of the directors; n) The time at which and the place within this Province where the annual meetings of the company shall be held, and the place where its chief place of business shall be; o) The place or places where its business shall be conducted; p) The calling of meetings, regular and special, of the board of directors, and of the company; q) The quorum, the requirements as to proxies, and the procedure in all things at such meetings, the imposition and recovery of all penalties and forfeitures admitting of regulation by by-law, and the conduct in all other particulars of the affairs of the company. 3. They may from time to time repeal, amend, or re-enact the same. 4. Every such by-law, and every repeal, amendment, or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company duly called for that purpose, shall only have effect until the next annual meeting of the company, and, in default of confirmation thereat, shall, from that time only, cease to be in force. 5. Every by-law for the purpose of changing the company's chief place of business, shall be published in the *Quebec Official Gazette*, and a certified copy thereof, under the seal of the company, shall be forwarded to the Provincial Secretary without delay.

R. S. Q. § 4663; 6 Edw. 7, c. 31, § 1.

**Liability for lending money to shareholders. 5970.** No loan shall be made by the company to any shareholder, and, if such be made, all directors and other officer of the company making the same, or in any wise assenting thereto, shall, to the extent of such loan, including legal interest, be jointly and severally liable both to the company and to third parties for all debts of the company contracted from the time of the making of such loan to that of the repayment thereof.

R. S. Q. § 4664.

**Liability of directors for wages. Amount recoverable. 5971.** The directors of the company shall be jointly and severally liable to the laborers, servants, and apprentices of the company, for all debts not exceeding one year's wages, due for services performed for the company while they are such directors respectively. No director shall be liable to an action for such debt, unless the company has been sued therefor within one year after the debt became due, nor unless such director is sued therefor within one year from the time when he ceased to be such director, nor before an execution against the company has been returned unsatisfied in whole or in part. The amount due on such execution shall be the amount recoverable, with costs, against the directors.

R. S. Q. § 4665.

**Proof of by-laws. 5972.** A copy of any by-law of the company, under its seal, and purporting to be signed by any officer of the company, shall be received as prima facie evidence of such by-law in all Courts in this Province.

R. S. Q. § 4666.

#### § 4. *Capital Stock, Shareholders, Shares and Calls.*

**Calling special meetings. 5973.** One-fourth part in value of the shareholders of the company shall at all times have the right to call a special meeting thereof, for the transaction of any business specified in such written requisition and notice as they may issue to that effect.

R. S. Q. § 4667; Imp. § 66.

**Capital stock of joint stock companies. Amount paid in to be published. What property accounts to represent. Stock not to be issued for increased value. Watering of stock forbidden. Capitalization of surplus earnings etc., forbidden. Fictitious capitalization of stock, etc., forbidden. 5974.** 1. The capital stock of all joint stock companies shall consist of that portion of the amount authorized by the charter, which has been bona fide subscribed for and allotted, and shall be paid in cash. 2. The amount of paid up capital, from year to year, shall be published annually in a report to the shareholders. 3. The property accounts of a company shall represent only the amount of the actual bona fide outlay necessary for the undertaking. No stock shall be issued to represent the increased value of any property. Any such issue shall be null and void. 4. The practice, commonly known as watering of stock, is prohibited, and all stock so issued shall be null and void. 5. The capitalization of surplus earnings and the issue of stock to represent such capitalized surplus, are also prohibited, and all stock so issued shall be null and void, and the directors consenting to such issue of stock shall be jointly and severally liable to the holders thereof for the re-imbursement of the amount paid for such stock. 6. Every form and manner of fictitious capitalization of stock in any joint stock company, or the issuing of stock which is not represented by a legitimate and necessary expenditure in the interest of such company, and not represented by an amount in cash paid into the treasury of the company, which has been expended for the promotion of the objects of the company, is prohibited, and all such stock shall be null and void.

R. S. Q. § 4668.

**Transfer of stock. 5975.** The stock of the company shall be deemed moveable property, and shall be transferable, in such manner only, and subject to all such conditions and restrictions as by this section, or by the charter, or the by-laws of the company, shall be prescribed.

R. S. Q. § 4669; Imp. § 22.

**Allotting stock. 5976.** If the charter makes no other definite provision, the stock of the company shall be allotted, when and as the directors, by by-law or otherwise, may order.

R. S. Q. § 4670; Imp. §§ 85, 86.

**Preferred stock. 5977.** The directors may make by-laws for issuing any part of the capital stock as preferred stock, giving the same such preference as to dividends and otherwise over ordinary stock as may be declared by the by-law. The by-law may provide that the holders of such shares shall have the right to elect a certain number of the board of directors, and may give them any other control over the affairs of the company. No such by-law shall have any effect, until it has been unanimously sanctioned in writing by the shareholders; or has been sanctioned by the unanimous vote of all the shareholders, present in person or by proxy at a special general meeting of the company called for considering the same; or has been sanctioned by three-fourths in value of the shareholders, and approved by the Lieute-



nant-Governor in Council. The approval by the Lieutenant-Governor in Council shall not be given until after a notice of one month has been sent by registered letter to all the shareholders. Holders of such preferred shares shall be shareholders within the meaning of this section, and shall in all respects possess the rights and be subject to the liabilities of shareholders, saving the preference and rights above mentioned given by any such by-law. Nothing in this article contained, or done in pursuance thereof, shall affect the rights of creditors of any company.

R. S. Q. § 4663a; 61 Vic. c. 35, § 1.

**Calling in instalments. Interest thereon. 5978.** The directors of the company may call in and demand from the shareholders thereof, respectively, all sums of money subscribed by them, at such times and places, and in such payments or instalments, as the charter, or as this section may require. Interest shall accrue and fall due, at the rate of six per cent. per annum, upon the amount of any unpaid call, from the day appointed for the payment of such call.

R. S. Q. § 4671.

**Amount of each instalment. 5979.** Not less than ten per cent upon the allotted stock of the company shall, by means of one or more calls, be called in and made payable within one year from the incorporation of the company; and every year thereafter a further amount of at least five per cent. shall in like manner be called in and made payable, until one-half shall have been so called in.

R. S. Q. § 4672.

**Action for calls. Allegations. Proof. 5980.** The company may enforce payment of all calls and interest thereon, by action before any competent Court. In such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, in respect of one call or more upon one share or more, stating the number of calls and the amount of each, whereby an action has accrued to the company. A certificate under the seal of the company, and purporting to be signed by any officer of the company, to the effect that the defendant is a shareholder, that such calls have been made, and that so much is due by him and unpaid thereon, shall be received in all courts of law as prima facie evidence to that effect.

R. S. Q. § 4673.

**Forfeiture for non-payment. 5981.** If, after such demand or notice as by the charter or the by-laws of the company may be prescribed, any call made upon any share be not paid within the prescribed time, the directors may, in their discretion, by vote to that effect, reciting the facts, and duly recorded in their minutes, summarily declare forfeited any share whereon such payment has not been made; and the same shall thereupon become the property of the company, and may be disposed of as by by-law or otherwise they shall order.

R. S. Q. § 4674.

**Calls must be paid before transfer. 5982.** No share shall be transferable until all previous calls thereon have been fully paid, or until declared forfeited for non-payment of calls thereon, or sold under execution.

R. S. Q. § 4675.

**Shareholders in arrears not to vote. 5983.** No shareholder being in arrears in respect of any call, shall be entitled to vote at any meeting of the company.

R. S. Q. § 4676.

**Liability of shareholders. 5984.** Each shareholder shall, until the whole amount of his stock has been paid up, be personally liable to the creditors of the company, to an amount equal to that not paid up thereon; but shall not be liable to an action therefor by any creditor, before an execution against the company has been returned unsatisfied in whole or in part; and the amount due on such execution shall be the amount recoverable with costs against such shareholder.

R. S. Q. § 4677; Imp. § 123.

**Liability limited. 5985.** The shareholders of the company shall not as such be responsible for any act, default, or liability whatever of the company, or for any engagement, claim, payment, loss, injury, transaction, matter, or thing whatever, relating to or connected with the company, beyond the amount of their respective shares in the capital stock thereof.

R. S. Q. § 4678; Imp. § 123.

**Stock held for others. Stock held as collateral. 5986.** No person holding stock in the company in the name of another shall be personally subject to liability as a

shareholder; but the estates and funds in the hands of such person belonging to the person he represents, shall be liable in like manner, and to the same extent, as the person represented is or would be if holding such stock in his own name. No person holding stock as collateral security shall be personally subject to such liability, but the person pledging such stock shall be considered as holding the same, and shall be liable as a shareholder accordingly.

R. S. Q. § 4679.

**Voting on stock. 5987.** Every person holding and possessing shares in the name of another, shall represent the stock in his hands at all meetings of the company, and may vote accordingly as a shareholder; and so with every person who pledges his stock.

R. S. Q. § 4680.

#### § 5. *Borrowing Powers.*

**Issue of notes authorized. Issue of debentures authorized. Privilege of debentures after registration. Company may grant hypothec to secure payment of debentures. Effect thereof when duly registered. 5988.** The company may, by resolution, issue notes, payable to order or to bearer, for the settlement of accounts or other current matters; it may further, on a resolution of two-thirds of the shareholders present at a meeting specially called for the purpose, issue bonds or debentures to the amount of two-thirds of the total value of the immoveable property. Such bonds or debentures, after their registration in the office or offices of the registration division or divisions in which the immoveables of the said company are situated (which immoveables must be described in a notice to that effect given to the Registrar), constitute a privileged claim in favour of the holders thereof against the company, and give a right of preference over all other debts and claims against the company, posterior to the issuing of such bonds or debentures. To secure the payment of its bonds or debentures, the company may, by its duly authorized officers, grant to one or more trustees an hypothec upon the immoveable property of the company, mentioning the issue and the amount of the bonds or debentures secured thereby; and such hypothec shall, when duly registered, be a valid security in favor of the holders of such bonds or debentures, issued before or after the execution of such hypothec, notwithstanding article 2017 of the Civil Code.

2 Edw. 7, c. 30, § 1; 4 Edw. 7, c. 33, § 1.

#### § 6. *Books to be Kept.*

**Books to be kept by the company. 5989.** The company shall cause a book or books to be kept by the secretary, or by some other officer specially charged with that duty, wherein shall be kept recorded: 1. Every by-law of the company; 2. The names, alphabetically arranged, of all persons who are or have been shareholders; 3. The address and calling of every such person, while such shareholder; 4. The number of shares of stock held by each shareholder; 5. The amounts paid in, and remaining unpaid, respectively, on the stock of each shareholder; 6. All transfers of stock, in their order as presented to the company for entry, with the date and other particulars of each transfer, and the date of the entry thereof. 7. The names, addresses, and calling of all persons who are or have been directors of the company; with the several dates at which each become or ceased to be such director.

R. S. Q. § 4681; Imp. § 25 (1).

**Directors may disallow entry in certain cases. Their liability if allowed in such cases. Declaration of dissent. 5990.** The directors may refuse to allow the entry in any book mentioned in article 5989, of any transfer, not made by sale under execution, of stock whereof the whole amount has not been paid in; and whenever an entry is made in such book, of any such voluntary transfer of stock not fully paid up to a person not being of apparently sufficient means, the directors shall be liable, jointly and severally, to the creditors of the company, in the same manner and to the same extent as the transferring shareholder, but for such entry, would have been. If, however, any director present when such entry is allowed, do forthwith, or if any director then absent do, within twentyfour hours after he shall have become aware thereof and able so to do, enter in the minute book of the board of directors his protest against the same, and do within eight days thereafter publish such protest in at least one newspaper published in or as near as possible to the place where the office or chief place of business of the company is situated, such director may thereby, and not otherwise, exonerate himself from such liability.

R. S. Q. § 4682.



**Effect of transfer limited until allowed. 5991.** No transfer of stock, unless made by sale under execution, shall be valid for any purpose, save only as exhibiting the rights of the parties thereto towards each other, and as rendering the transferee liable in the meantime jointly and severally with the transferor, to the company and its creditors, until entry thereof has been duly made in such books.

R. S. Q. § 4683.

**Books to be open to share holders and creditors. Taking of extracts. 5992.** Such books shall, during ordinary business hours of every day, except Sundays and holidays, be kept open for the inspection of the shareholders and creditors of the company and their representatives, at the office or chief place of business of the company. All shareholders, creditors, or their representatives, may make extracts therefrom.

R. S. Q. § 4684; Imp. § 30 (1, 2).

**Books shall be evidence. 5993.** In any suit or proceeding against the company or against any shareholder, such books shall be prima facie evidence of all facts stated therein.

R. S. Q. § 4685; Imp. § 33.

**Penalty for untrue entries, etc. 5994.** Every director, officer, or servant of the company, who knowingly makes or assists in making any untrue entry in any such book, or who refuses or neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected and extracts to be taken therefrom, shall be liable to a penalty of one hundred dollars for every such untrue entry and for every such refusal or neglect, and also in damages for all loss or injury which any party interested may have sustained thereby.

R. S. Q. § 4686; Imp. §§ 30 (3), 216.

**Forfeiture of rights for not keeping books. 5995.** Every company neglecting to keep such books so open for inspection, shall forfeit its corporate rights.

R. S. Q. § 4687; Imp. § 25 (2).

#### § 7. *Trusts, Contracts &c.*

**Company not bound to see to execution of trusts. 5996.** The company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, in respect of any shares; and the receipt of the shareholder in whose name the same may stand in the books of the company, shall be a valid and binding discharge to the company for any dividend or money payable in respect of such shares, whether or not notice of such trust shall have been given to the company; and the company shall not be bound to see to the application of the money paid upon such receipt.

R. S. Q. § 4688; Imp. § 27.

**Contracts, etc., by the company, how executed. Seal not necessary. Proviso as to bank notes. 5997.** Every contract, agreement, engagement, or bargain made, and every bill of exchange drawn, accepted, or endorsed, and every promissory note and cheque made, drawn, or endorsed on behalf of the company, by any agent, officer, or servant, in general accordance with his powers as such under the by-laws, shall be binding upon the company. In no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note, or cheque, or to prove that the same was made, drawn, accepted, or endorsed, as the case may be, in pursuance of any by-law, or special vote, or order; nor shall the party so acting as agent, officer, or servant of the company, be thereby subjected individually to any liability to any third party therefor. Provided, always, that nothing in this article shall be construed to authorize the company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money, or as the note of a bank.

R. S. Q. § 4689; Imp. §§ 76, 77.

**No company, unless authorized, to buy stock in another. 5998.** No company shall use any of its funds in the purchase of stock in any other corporation, unless in so far as such purchase may be specially authorized by its charter, and also by the charter of such other corporation.

R. S. Q. § 4690.

#### § 8. *Dividends.*

**Dividend not to impair capital. Dividend unearned not to be paid. Dividend may be supplemented from reserve fund. Liability if dividend out of reserve fund, without resolution. Liability of directors. 5999.** 1. No company shall declare a divi-

dend, the payment of which impairs or lessens the capital of the company. 2. No dividend shall be declared or paid, which shall not have been actually earned by the company. The annual dividend may, however, be supplemented or paid entirely out of the reserve fund; but payment of the dividend in this way must be publicly announced to the shareholders, at the annual meeting, and duly authorized by a resolution of the company. In default of such resolution, the directors of the company, voting for or consenting to such increase, shall be jointly and severally liable to the creditors of the company for the amount of dividend paid in excess of that actually earned. 3. Should any dividend, the payment of which is forbidden by this article, be declared or paid, the directors voting for, or consenting to the payment of such dividend, shall be jointly and severally liable to the creditors of such company for the amounts so paid.

R. S. Q. § 4691.

**Penalty for paying dividends, when company is insolvent, etc. How any directors may avoid such liability. 6000.** The directors who declare and pay any dividend when the company is insolvent, or any dividend the payment of which renders the company insolvent, or diminishes the capital stock thereof, shall be jointly and severally liable, as well to the company as to the shareholders and creditors thereof, for all the then existing debts of the company and for all thereafter contracted during their continuance in office, respectively; but if any director, present when such dividend is declared, do forthwith, or if any director then absent do within twenty-four hours after he shall have become aware thereof and able so to do, enter on the minutes of the board of directors his protest against the same, and do within eight days thereafter publish such protest in at least one newspaper published at or as near as may be possible to the office or chief place of business of the company, such director may thereby, and not otherwise, exonerate himself from such liability.

R. S. Q. § 4692.

#### § 9. *Suits.*

**Actions between shareholders and company. 6001.** Any kind of action may be instituted between the company and any shareholder thereof.

R. S. Q. § 4693.

### *Section II. Incorporation of Joint Stock Companies by Letters Patent.*

#### § 1. *Short Title.*

**Short title. 6002.** This section may be cited as *The Quebec Companies' Act*.  
7 Edw. 7. c. 48. § 1; Imp. § 295.

#### § 2. *Interpretation.*

**Interpretation. 6003.** In this section, and in all letters patent and supplementary letters patent issued under it, unless the context otherwise requires: a) The expression "the company" or "a company" means any company to which this section applies; b) The expression "the undertaking" means the business of every kind which the company is authorized to carry on; c) The expression "real estate" or "land," includes all immoveable property of any kind; d) The word "shareholder" means every subscriber to or holder of stock in the company, and includes the representatives of the shareholder; e) The word "manager" includes the cashier and the secretary.

7 Edw. 7. c. 48. § 2; Imp. § 285.

#### § 3. *Application of section.*

**Application. 6004.** This section shall apply: 1. To all companies incorporated under it; 2. To all companies which, previous to the coming into force of this section, were subject to the provisions of the *Quebec Companies' Act, 1907*; 3. To all existing companies incorporated by letters patent under the laws of this Province, and which shall obtain new letters patent under article 6013.

7 Edw. 7. c. 48. § 3; 9 Edw. 7. c. 60. § 3; Imp. § 245—248.

#### § 4. *Preliminaries.*

**Preliminaries. 6005.** The provisions of this section relating to matters preliminary to the issue of the letters patent or supplementary letters patent, shall be deemed directory only, and no letters patent or supplementary letters patent issued under this section shall be held void or voidable on account of any irregularity in



respect of any matter preliminary to the issue of the letters patent or supplementary letters patent.

7 Edw. 7, c. 48, § 4. The legal existence of a corporation, can not be attacked in a collateral proceeding on the ground that the requirements of the statute, providing for filing of a declaration in the prothonotary's office, under the seal of the corporation, has not been complied with: *Union Building Society v. Russell*, (1858), 8 L. C. R. 276.

### § 5. *Formation of new companies.*

**Incorporation of companies by letters patent. Exception. 6006.** The Lieutenant-Governor may, by letters patent under the great seal, grant a charter to any number of persons, not less than five, who petition therefor, constituting such persons, and others who have become subscribers to the memorandum of agreement hereinafter mentioned and who thereafter become shareholders in the company thereby created, a corporation, for any of the purposes or objects to which the legislative authority of the Province extends, except the construction and working of railways or the business of insurance.

7 Edw. 7, c. 48, § 5; Imp. § 2. A company may be incorporated by letters patent under this Act for the purpose of navigation within the limits of this Province. — *MacDougall v. Union Navigation Company*, (1877), 21 L. C. J. 63.

**Petition for letters patent. Name. Purposes. Chief place of business. Capital. Shares. Names, etc., of petitioners. Stock taken and amount paid. 6007.** The petitioners, who must be of the full age of twenty-one years, shall file in the Department of the Provincial Secretary a petition setting forth the following particulars: a) The proposed corporate name of the company, which shall not be that of any other known company, incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise, on public grounds, objectionable; b) The purposes for which its incorporation is sought; c) The place within the Province which is to be its chief place of business; d) The proposed amount of its capital stock; e) The number of shares and the amount of each share; f) The names in full and the address and calling of each of the petitioners, with special mention of the names of not more than fifteen and not less than three of their number, who are to be the first or provisional directors of the company; g) The amount of stock taken by each petitioner, the amount, if any, paid in upon the stock of each petitioner, and the manner in which the same has been paid, and is held for the company.

7 Edw. 7, c. 48, § 6; Imp. §§ 3—5.

**Certain provisions that may be embodied in letters patent, etc. Memorandum of agreement. Proofs of facts, etc. Name not to be that of another company, etc. 6008.** The petition may ask for the embodying in the letters patent of any provision which, under this section, might be made by-law of the company or by by-law of the directors approved by a vote of shareholders; and such provision so embodied shall not, unless provision to the contrary is made in the letters patent, be subject to repeal or alteration by by-law. The petition shall be accompanied by a memorandum of agreement, in duplicate, both of which may be similar to — and shall in their essential features conform to — the forms A and B. Before the letters patent are issued, the petitioners shall establish, to the satisfaction of the Provincial Secretary, the sufficiency of their petition and memorandum of agreement and the truth and sufficiency of the facts therein set forth, and that the proposed name is not the name of any other known incorporated or unincorporated company, or any name likely to be confounded therewith; and for that purpose, the Provincial Secretary shall take and keep of record any requisite evidence in writing, by oath or affirmation.

7 Edw. 7, c. 48, § 7; Imp. §§ 8, 10.

**Facts to be recited in letters patent. 6009.** The letters patent shall recite such of the established averments in the petition and memorandum of agreement as the Provincial Secretary thinks proper.

7 Edw. 7, c. 48, § 8.

**Another corporate name may be given. 6010.** The Lieutenant-Governor may give to the company a corporate name different from that proposed by the petitioners if the proposed name is objectionable.

7 Edw. 7, c. 48, § 9; Imp. § 8.

**Notice of issuing of letters patent. Incorporation. Copies of notice to be published. 6011.** Notice of the granting of the letters patent, shall be forthwith given by the Provincial Secretary, by two insertions in the *Quebec Official Gazette*, in the form C; and thereupon, from the date of the letters patent, the persons therein named, and

such persons as have become subscribers to the memorandum of agreement or who thereafter become shareholders in the company, and their successors, shall be a corporation, by the name mentioned in the letters patent; and a copy in French of every such notice shall forthwith be, by the company to which such notice relates, inserted four different times in at least one news-paper, if any, published in the French language in the locality where the head office or chief agency is established, and a copy, the same number of times, in English in one newspaper, if any, published in the English language in such locality; otherwise in a newspaper or newspapers published in the place nearest thereto.

7 Edw. 7, c. 48, § 10. In *Garrick v. Canada Pipe & Foundry Company*, (1883), Q. R. 3 S. C. 383, it was held that proof of the incorporation of a company could only be made by production of the letters patent granted to it, or of a copy of the *Official Gazette* containing notice of the granting of the letters patent.

**Correction or re-issue letters patent. Effect thereof. Proviso. Notice of correction or re-issue. 6012.** Whenever the letters patent contain any misnomer, mis-description, or other clerical error, the Provincial Secretary may, on petition of the company, if there is no adverse claim, direct such letters patent to be corrected or to be cancelled and correct ones to be issued in their stead. The new or corrected letters patent shall have the same effect as if correctly issued at the date of the original letters patent, and acquired rights of third persons shall not be affected by such correction or re-issue. Notice of the correction of such letters patent or of the issue of new letters patent, shall forthwith be given by the Provincial Secretary in the *Quebec Official Gazette*.

7 Edw. 7, c. 48, § 10a; 9 Edw. 7, c. 60, § 2.

#### § 6. *Existing companies.*

**Existing companies may apply for charter under this section. Not necessary to state shareholders' names. Company governed by this section, etc. 6013.** Any company heretofore incorporated for any purpose or object for which letters patent may be issued under this section, whether under a special or a general act, and now a subsisting and valid corporation, may apply for letters patent to carry on its business under this section; and the Lieutenant-Governor may direct the issue of letters patent incorporating the shareholders of the said company as a company under this section; and thereupon all the rights and obligations of the former company shall be transferred to the new company, and all proceedings may be continued or commenced by or against the new company that might have been continued or commenced by or against the old company. It shall not be necessary in any such letters patent to set out the names of the shareholders. After the issue of the letters patent the company shall be governed in all respects by the provisions of this section, except that the liability of the shareholders to creditors of the old company shall remain as at the time of the issue of the letters patent.

7 Edw. 7, c. 48, § 11; Imp. § 249.

**Subsisting companies may ask for extended powers. 6014.** If such company applies for the issue of letters patent under this section, the Lieutenant-Governor may, by the letters patent, upon petition to that effect, extend the powers of the company to such other objects for which letters patent may be issued under this section, as the petitioners desire and as the Lieutenant-Governor thinks fit to include in the letters patent; and the Lieutenant-Governor may, in the said letters patent, name the first directors of the new company; and the letters patent may be issued to the new company by the name of the old company or by another name.

7 Edw. 7, c. 48, § 12.

#### § 7. *Change of name.*

**Lieutenant-Governor may change name. 6015.** If it is made to appear, to the satisfaction of the Provincial Secretary, that the name of a company (whether given by the original or by supplementary letters patent, or on amalgamation) is the same as the name of an existing incorporated or unincorporated company, or so similar thereto as to be liable to be confounded therewith, or otherwise on public grounds objectionable, the Lieutenant-Governor may direct the issue of supplementary letters patent, reciting the former letters and changing the name of the company to some other name which shall be set forth in the supplementary letters patent.

7 Edw. 7, c. 48, § 14; Imp. § 8 (2).



**Company may obtain change of name. 6016.** When a company desires to adopt another name, the Lieutenant-Governor, upon being satisfied that the change desired is not for any improper purpose, may direct the issue of supplementary letters patent, reciting the former letters patent and changing the name of the company to some other name, which shall be set forth in the supplementary letters patent.

7 Edw. 7, c. 48, § 15; Imp. § 8 (3).

**Change not to affect rights, etc. 6017.** No alteration of its name under articles 6015 and 6016 shall affect the rights or obligations of the company; and all proceedings may be continued or commenced by or against the company under its new name that might have been continued or commenced by or against the company under its former name.

7 Edw. 7, c. 48, § 16; Imp. § 8 (5).

### § 8. Fees.

**Fees on letters patent. Amount of fees may be varied. Must be paid before steps taken. 6018.** 1. The Lieutenant-Governor in Council may, from time to time, establish, alter, and regulate the tariff of the fees to be paid on application for letters patent and supplementary letters patent under this section, and may prescribe the forms of proceeding and registration in respect thereof, and all other matters requisite for carrying out the objects of this section. 2. The amount of the fees may be varied according to the nature of the company, the amount of the capital stock and other particulars, as the Lieutenant-Governor in Council thinks fit. 3. No steps shall be taken in the Department of the Provincial Secretary towards the issue of any letters patent or supplementary letters patent under this section until after all fees therefor are duly paid.

7 Edw. 7, c. 48, § 17.

### § 9. Commencement of business.

**Capital to be subscribed, etc., before business begun. Directors liability for contravention. Does not apply to certain companies. 6019.** The company shall not commence its operations or incur any liability before ten per cent. of its authorized capital has been subscribed and paid for, and a declaration under oath, by the secretary of the company, establishing such fact, has been deposited in the Department of the Provincial Secretary. Every director who expressly or impliedly authorizes such operations being so commenced or liabilities being so incurred, shall be jointly and severally liable with the company for the payment of such liabilities. This article shall not apply to companies existing before the first day of July 1907.

7 Edw. 7, c. 48, § 18; Imp. § 87.

### § 10. Forfeiture of charter.

**Forfeiture of charter for non-user. 6020.** Unless another delay be specified in the letters patent, or in an act of the Legislature incorporating a company, the charter of the company shall be forfeited de jure by non-user during three consecutive years, or if the company does not go into actual operation within three years after it is granted.

7 Edw. 7, c. 48, § 19; 8 Edw. 7, c. 64, § 1; Imp. § 242. The Crown, alone, has the right of demanding that letters patent, granted under the great seal of the Province, be annulled. — *Compagnie de Nav. Union v. Rascony*, (1876), 20 L. C. J. 306. The fact that a railway company has not made the necessary deposit, nor commenced construction within the three years prescribed by its charter, does not *ipso facto* extinguish the company, nor revoke its charter; and at all events extinction can only be procured upon special suit by the Attorney General. — *Roy v. La Compagnie du Chemin de fer Quebec*, (1888), 14 Q. L. R. 255. The Attorney-General of the Province is the sole dominus of a suit instituted by him in his official capacity, whether there by a relator or not; accordingly a mandamus will not lie at the instance of a relator to compel him to proceed in an action. Neither need he obtain leave of the Court before discontinuing such proceeding. — *Casgrain v. Atlantic & Northwest Railway Company*, (1895) A. C. 282, affirming s. c., (1892), Q. R., 2 Q. B. 305. See also, *Dominion Salvage & Wrecking Company v. Attorney-General*, (1892), 21 S. C. R. 72; *Loranger v. Montreal Telegraph Company*, (1882), 5 L. N. 429. A joint-stock company formed under this Act, which after receipt of subscriptions to its capital stock, elects and re-elects directors, acts through the latter at several meetings and sells merchandise, though such sale is not followed by delivery of the goods, goes "into actual operation" so as to avoid the forfeiture intended by this section. — *Cie. Générale des Boissons Canadiennes v. Attorney-General of Quebec*, (1906), Q. R. 15 K. B. 536. See also: *Compagnie de Navigation v. Christin*, (1880), 4 L. N. 162.

§ 11. *General powers and duties of the company.*

**Powers to be subject to this section. 6021.** All powers given to the company by the letters patent or supplementary letters patent, shall be exercised subject to the provisions and restrictions contained in this section.

7 Edw. 7, c. 48, § 20. A foreign corporation can not acquire land without the permission of the Crown or the authority of the legislature, and, therefore, a foreign corporation, not having such permission or authority, has no right of action against a vendor of land in the Province of Quebec, for damages by reason of eviction from such land. — *Chaudière Gold Mining Company v. Desbarats*, (1873), 17 L. C. J. 275, affirming s. c., (1870), 15 L. C. J. 44, and s. c., (1869), 13 L. C. J. 182.

**General corporate powers. 6022.** The company may acquire, hold, hypothecate, sell and alienate immovable property requisite for the carrying on of its undertaking, and shall forthwith become and be vested with all property and rights, moveable and immovable, theretofore held by it or for it under any trust created with a view to its incorporation, and with all the powers, privileges, and immunities requisite or incidental to the carrying on of its undertaking.

7 Edw. 7, c. 48, § 21. See annotations to §§ 6042, 6043, 6074. When a single shareholder sues to have an agreement declared *ultra vires*, he must prove that damage has been thereby occasioned to himself, personally. — *Montreal Telegraph Company v. Low*, (1873), 27 L. C. J. 257, reversing s. c., (1881), 25 L. C. J. 332. A company incorporated as a land and loan company can not lawfully purchase or deal in claims of a speculative character. — *Land & Loan Company v. Fraser*, (1889), M. L. R., 5 S. C. 392. A company whose charter provides that it may build, sell, lease, and otherwise deal with elevators may, upon the lease of an elevator, from an elevator company, guarantee the bonds issued by such elevator company, for the price of the elevator bought by the latter. — *Royal Trust Company v. Great Northern Elevator Company*, (1906), Q. R., 30 S. C. 499.

**Head office of the company. Other offices. 6023.** The company shall, at all times, have an office in the place in which its chief place of business is situate, which shall be the legal domicile of the company; and notice of the situation of such office and of any change therein shall be published in the *Quebec Official Gazette*. The company may establish such other offices and agencies elsewhere as it deems expedient.

7 Edw. 7, c. 48, § 22; 9 Edw. 7, c. 60, §§ 4, 5; Imp. § 62.

**Contracts, etc., when binding on company. No individual liability. Proviso. 6024.** Every contract, agreement, engagement, or bargain made, and every bill of exchange drawn, accepted, or indorsed, and every promissory note and cheque made, drawn, or indorsed on behalf of the company, by any agent, officer, or servant of the company, in general accordance with his powers as such under the by-laws of the company, shall be binding upon the company; and in no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note, or cheque, or to prove that the same was made, drawn, accepted, or indorsed, as the case may be, in pursuance of any by-law or resolution; and the person so acting as agent, officer, or servant of the company shall not be thereby subjected individually to any liability whatsoever to any third person therefor; provided always, that nothing in this section shall authorize the company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money, or as the note of a bank or to engage in the business of banking or insurance.

7 Edw. 7, c. 48, § 23; Imp. §§ 76, 77. Corporations are bound by the acts of their agents in the same way and to the same extent as natural persons. — *Ferrie v. The Wardens of the House of Industry*, (1845), 1 Rev. Leg. 27. Where the charter of a corporation does not provide for the exercise of its powers, otherwise than by giving it the right to make by-laws for the "government of the institution and of the officers and servants belonging thereto," and no such by-laws are made, the persons who are admitted to have de facto acted as the governing board of the body, will be held to be its duly authorized agents, whose acts, performed within the limits of the charter, are binding upon it. — *Hôpital du Sacré-Cœur v. Lefebvre*, (1891), 17 Q. L. R. 35. But unlawful acts of the managing director of a company, designed to bring about the ruin of a third party, do not bind the company or make it responsible for damages, unless approved or ratified by the company. — *Bury v. Corriveau Silk Mills Company*, (1887), M. L. R., 3 S. C. 218. Warehouse receipts of a cold storage company fraudulently signed by officers of the company, expressly authorized by the by-laws to sign such receipts, are valid as between the company and third persons acting in good faith. — *Ward v. Montreal Cold Storage & Freezing Company*, (1904), Q. R., 26 S. C. 310. A contract projected between a private person and a company to be formed is of no effect as respects the latter after its incorporation. Having no legal existence, it can not ratify such a contract. To make it effective, it is necessary for the company, after its incorpora-



tion, through its board of directors to become formally bound in a manner provided by its by-laws. — *Duquenne v. La Compagnie Générale des Boissons Canadiennes*, (1907), Q. R., 31 S. C. 409. The party who contracts such an obligation is personally liable for the execution of the contract if the company after its organization, repudiates it. — *Irwin v. Lessard*, (1889), 17 Rev. Leg. 589. A company which, with its president, appropriates shares in its capital stock to the prejudice of a shareholder, is bound to indemnify such shareholder for the damage he may suffer. — *Acer v. Percy*, (1901), 5 Q. P. R. 401. The president of a company may institute and prosecute suits for the company and appoint attorneys ad litem, without express delegation of power or resolution of the board of directors. — *Standard Trust Company v. South Shore Railway Co.*, (1901), 5 Q. P. R. 257. In *Bolt & Iron Company v. Gougeon*, (1884), 7 L. N. 40, a deed of composition and discharge, signed by the secretary of a company, without special authority to that end, was held not binding on the company.

### § 12. *Obtaining of further powers.*

**Company may authorize directors to apply for extended powers. 6025.** The company may, from time to time, by a resolution passed by the votes of shareholders representing at least two-thirds in value of the subscribed stock of the company, at a special general meeting called for the purpose, authorize the directors to apply for supplementary letters patent, extending the powers of the company to such other purposes or objects for which a company may be incorporated under this section, as are defined in the resolution.

7 Edw. 7, c. 48, § 24; Imp. § 9.

**Application therefor by directors. 6026.** The directors may, at any time within six months after the passing of any such resolution, apply to the Lieutenant-Governor for the issue of such supplementary letters patent.

7 Edw. 7, c. 48, § 25.

**Proof to be furnished. Provincial Secretary. 6027.** Before such supplementary letters patent are issued, the petitioners shall establish, to the satisfaction of the Provincial Secretary, the due passing of the resolution authorizing the petition, and for that purpose the Provincial Secretary shall take and keep of record any requisite evidence in writing, by oath or affirmation.

7 Edw. 7, c. 48, § 26; Imp. § 9.

**Grant of supplementary letters patent. Notice of issue thereof, etc. 6028.** Upon due proof so made, the Lieutenant-Governor may grant supplementary letters patent extending the powers of the company to all or any of the objects defined in the resolution; and notice thereof shall be forthwith given by the Provincial Secretary, in the *Quebec Official Gazette*, according to form D; and, from the date of the supplementary letters patent, the undertaking of the company shall extend to and include the other purposes or objects set out in the supplementary letters patent as fully as if such other purposes or objects were mentioned in the original letters patent or the charter; and every such notice shall forthwith be, by the company to which the notice relates, inserted in newspapers in accordance with the provisions of article 6011.

7 Edw. 7, c. 48, § 27; Imp. § 9 (6).

**Penalty. 6029.** If the company fails or neglects to cause the notice mentioned in article 6028 to be inserted, it shall be guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding twenty dollars for each day that such failure or neglect continues.

7 Edw. 7, c. 48, § 28; Imp. § 9 (7).

### § 13. *Liability of shareholders.*

**Liability limited to amount unpaid on stock. 6030.** The shareholders of the company shall not, as such, be responsible for any act, default or liability of the company, or for any engagement, claim, payment, loss, injury, transaction, matter, or thing relating to or connected with the company, beyond the amount unpaid on their respective shares in the capital stock thereof.

7 Edw. 7, c. 48, § 29; Imp. § 123. See annotations to § 6031, *infra*.

**Liability of shareholders. When shareholders liable to action thereon, etc. Defences that may be pleaded, etc. 6031.** 1. Every shareholder shall, until the whole amount of his shares has been paid up, be individually liable to the creditors of the company to an amount equal to that not paid up thereon; but he shall not be liable to an action therefor by any creditor until an execution at the suit of such creditor against the company has been returned unsatisfied in whole or in part; and the amount due on such execution, not exceeding the amount unpaid on his shares as

foresaid, shall be the amount recoverable, with costs, from such shareholder; and any amount so recoverable, if paid by the shareholder, shall be considered as paid on his shares. 2. Any shareholder may plead by way of defence in whole or in part any compensation or set-off which he can set up against the company, except a claim for unpaid dividends, or a salary or allowance as a president or a director of the company.

7 Edw. 7, c. 48, § 30; Imp. § 123. For liability of shareholders for calls see annotations to §§ 6048, and 6051. *infra*. Where the members of a corporation have regularly passed a resolution, they can not be held personally responsible therefor, even when such resolution was in contravention of a statute which established punishment by fine for such contravention. — *Audette v. Duhamel*, (1868), 1 Rev. Leg. 52. One who joins with others in an application for the incorporation of a joint stock company, and permits his name to be mentioned in the letters patent, as a subscriber for a particular number of shares, is a shareholder and can not, in case the company is wound up, repudiate his liability as a contributor, on the ground that the company was never formally organized and could not, therefore, incur the obligation which brought it into liquidation. — *Lafleur v. Saint Armour*, (1909), Q. R., 18 K. B. 400. A shareholder in an insolvent railway company can not avoid his liability to a judgment creditor of the company for the amount due on his unpaid stock, by claiming to compensate the same with a debt due to him by the company where no calls on the unpaid stock have been made by the company. — *Pyland v. Delisle*, (1869), 14 L. C. J. 12, reversing, s. c., (1867), 12 L. C. J. 29.

**Trustees, etc., not personally liable. 6032.** No person holding stock in the company as an executor, administrator, tutor, curator, guardian, or trustee of or for any person named in the books of the company as being so represented by him, shall be personally subject to liability as a shareholder; but the estate and funds in the hands of such person shall be liable in like manner, and to the same extent, as the testator or intestate, or the minor, ward, or interdicted person, or the person interested in such trust fund would be, if living and competent to act and holding such stock in his own name; and no person holding such stock as collateral security shall be personally subject to such liability, but the person pledging such stock shall be considered as holding the same and shall be liable as a shareholder accordingly.

7 Edw. 7, c. 48, § 31; Imp. §§ 126, 127.

**Trustees, etc., may vote. 6033.** Every such executor, administrator, tutor, curator, guardian, or trustee, shall represent the stock held by him, at all meetings of the company, and may vote thereon as a shareholder; and every person who pledges his stock may represent the same at all such meetings and, notwithstanding such pledge, vote thereon as a shareholder.

7 Edw. 7, c. 48, § 32.

**Prospectus, what to specify. 6034.** Every prospectus of the company, and every notice inviting persons to subscribe for shares in the company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors, or the company, or otherwise; and every prospectus or notice which does not specify the same shall, with respect to any person who takes shares in the company on the faith of such prospectus or notice, and who has not had notice of such contract, be deemed fraudulent on the part of the promoters, directors, and officers of the company who knowingly issue such prospectus or notice.

7 Edw. 7, c. 48, § 33; Imp. §§ 80, 84.

#### § 14. *Holding stock of other companies.*

**Conditions for purchase of stock of other companies. 6035.** The company shall not use any of its funds in the purchase of stock in any other corporation, unless and until the directors have been expressly authorized by a by-law passed by them for the purpose and sanctioned by a vote of not less than two-thirds in value of the capital stock represented at a general meeting of the company duly called for considering the subject of the by-law; but if the letters patent authorize such purchase, it shall not be necessary to pass such by-law.

7 Edw. 7, c. 48, § 34. Where a projected company is in the course of formation to buy up the stock and take over the business of several existing companies, a sale to the promoters of the shares in one of them, to be paid for by the stock of the new company, such shares to remain in the hands of a third party in trust, until certain conditions have been fulfilled, is a conditional sale, and failing the fulfillment of conditions, the seller has a right to demand the rescission of the transaction. — *Dominion Textile Company v. Angers*, (1908), 41 S. C. R. 185, affirming s. c., (1908), Q. R., 18 K. B. 63, which affirmed s. c., (1906), Q. R., 30 S. C. 56.



### § 15. *Capital Stock.*

**Stock of what to consist. Payable in cash. Exception. Annual report of paid up stock. Property accounts what to represent. No stock for increased value of property. Watering forbidden. Capitalization of surplus earnings, etc., forbidden. Fictitious capitalization, etc., forbidden. 6036.** 1. The capital stock of the company shall consist of that portion of the amount authorized by the charter, which shall have been bona fide subscribed for and allotted, and shall be paid in cash, unless payment therefor in some other manner has been agreed upon by a contract filed with the Provincial Secretary at or before the issue of such shares. The amount of paid up capital, from year to year, shall be published annually in a report to the shareholders of the company. 2. The property accounts of a company shall represent only the amount of the actual bona fide outlay necessary for the undertaking. No stock shall be issued to represent the increased value of any property. Any such issue shall be null and void. 3. The practice commonly known as watering of stock, is prohibited, and all stock so issued shall be null and void. 4. The capitalization of surplus earnings, and the issue of stock to represent such capitalized surplus are also prohibited, and all stock so issued shall be null and void, and the directors consenting to such issue of stock shall be jointly and severally liable to the holders thereof for the reimbursement of the amount paid for such stock. 5. Every form and manner of fictitious capitalization of stock in a company, or the issuing of stock which is not represented by a legitimate and necessary expenditure in the interest of such company, and not represented, with the exception mentioned in paragraph 1 of this article, by an amount in cash paid into the treasury of the company, which has been expended for the promotion of the objects of the company, is prohibited, and all such stock shall be null and void.

7 Edw. 7, c. 48, § 35.

**Stock to be moveable property. How transferable. 6037.** The stock of the company shall be moveable property, and shall be transferable, in such manner, and subject to all such conditions and restrictions, as are prescribed by this section or by the letters patent or by-laws of the company.

7 Edw. 7, c. 48, § 36; Imp. § 22.

**Allotment of stock. 6038.** If the letters patent, or the supplementary letters patent, make no other definite provision, the stock of the company, or any increased amount thereof, so far as it is not allotted thereby, shall be allotted at such times and in such manner as the directors prescribe by by-law.

7 Edw. 7, c. 48, § 37; Imp. §§ 85, 86. For liability of shareholders on calls see annotations to §§ 6048 and 6051, *infra*. A subscription for shares in the capital stock of a joint stock company, becomes a contract when the company accepts and allots the shares. Such acceptance and allotment may be by implication, as well as express. Hence, a transfer to a third party of the amount paid for the shares applied for, followed by a notice to subscriber, is an acceptance of the subscription and an implied allotment, — *Robert v. Eastern Townships Bank*, (1907) Q. R. 17 K. B. 157. New stock issued and allotted in shares to an actual stockholder by a joint stock company that has power to increase its capital, accrues to the principal or original stock by right of accession. Hence, in the case of shares held subject to usufruct, the proprietor, and not the usufructuary, is entitled to the benefit of such new issue of stock. — *Lamb v. Lamb*, (1909), Q. R., 10 K. B. 49.

**Preferred stock. Effect as to control of affairs, etc. Conditions precedent to effect of by-law. Rights of preference shareholders. Creditors not affected. 6039.** 1. The directors of the company may make a by-law for creating and issuing any part of the capital stock as preferred stock, giving the same such preference and priority as respects dividends, and in any other respect, over ordinary stock, as is declared by the by-law. 2. The by-law may provide that the holders of such preferred stock shall have the right to select a certain stated proportion of the board of directors, or may give them such other control over the affairs of the company as is considered expedient. 3. No such by-law shall have any force or effect until after it has been sanctioned by a vote of three-fourths of the shareholders, present in person or by proxy at a general meeting of the company duly called for considering the same, and representing two-thirds of the stock of the company, or unanimously sanctioned in writing by the shareholders of the company. If, however, the by-law be sanctioned by two-thirds in value of the shareholders, it shall come into force only after it has been approved by the Lieutenant-Governor. Such approval shall not be given until after a notice of one month has been sent by registered letter to all the shareholders. 4. Holders of shares of such preferred stock shall be share-

holders within the meaning of this section, and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of this section; provided, however, that in respect of dividends and in any other respect declared by by-law as authorized herein, they shall, as against the ordinary shareholders, be entitled to the preferences and rights given by such by-laws. 5. Nothing in this article contained, or done in pursuance thereof, shall affect the rights of creditors of any company.

7 Edw. 7, c. 48, § 38.

**Company need not see to execution of trust. 6040.** The company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, in respect of any share; and the receipt of the shareholder in whose name the same stands in the books of the company, shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, and whether or not notice of such trust has been given to the company; and the company shall not be bound to see to the application of the money paid upon such receipt.

7 Edw. 7, c. 48, § 39; Imp. § 27.

### § 16. *Increase or reduction of capital.*

**Subdivision of shares. Consolidation of shares. Purchase of fractional shares for consolidation. 6041.** 1. The directors of the company may, at any time, make a by-law subdividing the existing shares into shares of a smaller amount. 2. The directors may also, at any time, whenever the par value of the existing shares of the company is less than one hundred dollars each, make a by-law consolidating them into shares of a larger par value; but no such consolidated share shall exceed the par value of one hundred dollars. 3. For the purpose of such consolidation, the company may purchase fractions of shares, and the company shall sell any such shares held by them, within a delay of two years.

7 Edw. 7, c. 48, § 40; Imp. § 41.

**Increase of capital. By-law therefor. 6042.** 1. The directors may, at any time after ninety per cent of the capital stock of the company has been taken up and fifty per cent thereon paid in, make a by-law for increasing the capital stock to any amount which they consider requisite for the due carrying out of the objects of the company. 2. Such by-law shall declare the number of the shares of such stock, and may prescribe the manner in which the same shall be allotted; and in default of its so doing, the control of such allotment shall vest absolutely in the directors.

7 Edw. 7, c. 48, § 41; Imp. § 41. Even where the charter of a company allows the capital to be increased, the directors can not augment the original capital where the business of the company does not require it, and there is sufficient cash on hand to meet all the requirements of the business, and especially where such increase is sought to be made with a view to maintaining the directors in office. — *Perreault v. Milot*, (1886), 14 Rev. Leg. 417; 12 Q. L. R. 248.

**Reduction of capital. By-law therefor. Liability to creditors not affected. 6043.** 1. The directors may, at any time, make a by-law for reducing the capital stock of the company to any amount which they consider advisable and sufficient for the due carrying out of its undertaking. 2. Such by-law shall declare the number and value of the shares of the stock as so reduced, and the allotment thereof, or the manner in which the same shall be made. 3. The liability of shareholders to persons who were, at the time of the reduction of the capital, creditors of the company, shall remain the same as if the capital had not been reduced.

7 Edw. 7, c. 48, § 42; Imp. § 46. A company can not, unless authorized by its charter, or a special law, reduce its capital, purchase its own shares, or accept a surrender of its shares. Such transactions are *ultra vires* and void, and do not release the shareholders from their obligation to pay the value of their shares. — *Ross v. Fiset*, (1882), 8 Q. L. R. 251; *Ross v. Dusablon*, (1883), 10 Q. L. R. 74. Where the act incorporating a company provided that the capital stock should be of a certain amount and that the company might commence business when that amount should have been subscribed and one-third of it paid in, a resolution whereby the directors pretended to reduce the stock to lessen that amount was *ultra vires*, null and void. — *Molson's Bank v. Stoddart*, (1890), M. L. R., 6 S. C. 18. In *Ross v. Worthington*, (1882), 5 L. N. 140, it was held that a transfer of shares from a shareholder in a joint stock company which is made with the object and has the effect of reducing the capital stock of the company, is null, and all resolutions of the directors authorizing such transfer are illegal and *ultra vires*.

**Approval and confirmation of by-law. 6044.** No by-law for increasing or reducing the capital stock of the company, or for subdividing the shares, shall have any force or effect until it is approved by the votes of shareholders representing



at least two-thirds in value of all the subscribed stock of the company, at a special general meeting of the company duly called for considering the same, and afterwards confirmed by supplementary letters patent.

7 Edw. 7, c. 48, § 43; Imp. § § 46, 50.

**Application for supplementary letters patent. By-law to be produced with application. Evidence that may be taken. 6045.** 1. At any time, not more than six months after the sanction of such by-law, the directors may apply to the Lieutenant-Governor, for the issue of supplementary letters patent to confirm the same. 2. The directors shall, with such application, produce a copy of such by-law, under the seal of the company, and signed by the president or vice-president and the secretary and establish to the satisfaction of the Provincial Secretary, the due passage and approval of such by-law, and the expediency and bona fide character of the increase or reduction of capital or subdivision of shares, as the case may be, thereby provided for. 3. The Provincial Secretary shall, for that purpose, take and keep of record any requisite evidence in writing, by oath or affirmation.

7 Edw. 7, c. 48, § 44.

**Granting of supplementary letters patent. Notice. Effect of letters patent. 6046.** Upon due proof so made, the Lieutenant-Governor may grant such supplementary letters patent, and notice thereof shall be forthwith given by the Provincial Secretary in the *Quebec Official Gazette*, according to form E: and thereupon, from the date of the supplementary letters patent, the capital stock of the company shall be and remain increased or reduced, or the shares shall be sub-divided, as the case may be, to the amount, in the manner and subject to the conditions set forth by such by-law; and the whole of the stock, as so increased or reduced, shall become subject to the provisions of this section, in like manner as if every part thereof had been or formed part of the stock of the company originally subscribed.

7 Edw. 7, c. 48, § 45; Imp. § § 44, 51.

### § 17. *Calls.*

**Calls on unpaid shares. 6047.** Not less than ten per cent. upon the allotted shares of stock of the company shall, by means of one or more calls, be called in and made payable within one year from the incorporation of the company; the residue when and as the letters patent, or the provisions of this section, or the by-laws of the company direct.

7 Edw. 7, c. 48, § 46.

**Call when due. Interest on overdue calls. 6048.** A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed; and if a shareholder fails to pay any call due by him, on or before the day appointed for the payment thereof, he shall be liable to pay interest for the same, at the rate of six per cent. per annum, from the day appointed for payment to the time of actual payment thereof.

7 Edw. 7, c. 48, § 47. In the absence of a special agreement between the organizers of a joint stock company, no call can be made prior to the organization of the Corporation, because, until then, there is no board of directors capable of making such call. — *Cazelois v. Picotte*, (1900), Q. R., 18 S. C. 538. The enactment of a by-law to regulate the mode in which the call shall be made is not imperative; where no by-law exists, the calls may be made as prescribed by the directors. — *Rascony v. Cotton Manufacturing Company*, (1886), M. L. R., 2 S. C. 381.

**Payment in advance on shares. Interest allowable. 6049.** The directors may, if they think fit, receive from any shareholder willing to advance the same, all or any part of the amounts due on the shares held by such shareholder, beyond the sums then actually called for: and upon the moneys so paid in advance, or so much thereof as, from time to time, exceeds the amount of the call then made upon the shares in respect of which such advance is made, the company may pay interest at such rate, not exceeding eight per cent per annum, as the shareholders who pay such sum in advance and the directors agree upon.

7 Edw. 7, c. 48, § 48.

**Forfeiture of shares for non-payment of calls. Proviso. 6050.** If, after such demand or notice as is prescribed by the letters patent, or by resolution of the directors, or by the by-laws of the company, any call made upon any share is not paid within such time as, by such letters patent or by resolution of the directors or by the by-laws, is limited in that behalf, the directors, in their discretion, by vote to that effect duly recorded in their minutes, may summarily declare forfeited any shares whereon such payment has not been made; and the same shall thereupon become

the property of the company and may be disposed of as, by the by-laws of the company or otherwise, they prescribe; but, notwithstanding such forfeiture, the holder of such shares at the time of forfeiture shall continue liable to the then creditors of the company for the full amount unpaid on such shares at the time of forfeiture, less any sums which are subsequently received by the company in respect thereof.

7 Edw. 7. c. 48, § 49.

**Enforcement of payment by action. What must be alleged and proved. Certain certificate prima facie proof. 6051.** The directors may, if they see fit, instead of declaring forfeited any share or shares, enforce payment of all calls, and interest thereon, by action in any court of competent jurisdiction; and in such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrears amount, in respect of one call or more, upon one share or more, stating the number of calls and the amount of each call, whereby an action has accrued to the company under this section. A certificate under the seal of the company, and purporting to be signed by any of its officers, to the effect that the defendant is a shareholder, that such calls have been made, and that so much is due by him thereon, shall be received in all courts as prima facie evidence to that effect.

7 Edw. 7. c. 48, § 50. In an action by a joint stock company for calls on shares, it was held that the certificate, which the law makes prima facie evidence, is not rendered ineffectual by the mere denial of the defendant, but continues to be operative until some evidence is adduced tending to disprove the facts of which the certificate is offered as evidence. — *Stadatona Insurance Company v. Trudel*, (1879), 6 Q. L. R. 31, reversing s. c., (1878), 5 Q. L. R. 133. Proof that notices, claiming payment of calls, were mailed to the shareholders is sufficient evidence that such calls were made. — *Ross v. Converse*, (1883), 27 L. C. J., 143; 6 L. N. 67. No calls can be made upon shares, unless the conditions precedent to such a demand have been fulfilled. — *Massawippi Railroad Company v. Walker*, (1871), 3 Rev. Leg. 450. Where, on an action for calls, the defendant pleaded that the company was insolvent at the time the shares were transferred to him, and that the transfer had been obtained by fraud, and that the company was illegally incorporated, the plea was dismissed, the evidence showing that the defendant fully understood the position of the company when he accepted the transfer. — *Colonial Building Association v. Fletcher*, (1881), 4 L. N., 374. *Seem*, that a purchaser, subsequently to incorporation of shares subscribed prior to incorporation, who has paid a call after his purchase, is estopped from contesting the validity of the original subscription. — *MacDougall v. Union Navigation Company*, (1877), 21 L. C. J. 63. Defects in the organization of a company can not be pleaded in an action for calls. — *Cie. de Chemin de Fer de Pége Pointe Claire v. Valois*, (1881), 4 L. N., 334, following *Windsor Hotel Company v. Lewis*, (1881), 26 L. C. J., 29; 4 L. N., 331, and *Windsor Hotel Company v. Murphy*, (1877), 1 L. N. 74. Thus, in an action by a corporation to enforce payment of calls, defendant can not plead that the conditions of the articles of incorporation have not been complied with, and that the company has, for more than a year, carried on its business in violation of the provisions of the statutes incorporating it. — *Victoria Montreal Fire Insurance Company v. O'Neil*, (1901), 5 Q. P. R. 4. But see *Quebec & Richmond Railway Company v. Dawson*, (1851), 1 L. C. R. 366 and *Brown v. Dominion Salvage Company* (1891), 20 Rev. Leg. where, *seem*, contrary conclusions were reached. Subscription for stock may be conditional and in such case the non-fulfillment of condition will operate as a bar to any right of action for calls on stock. — *Rodgers v. Laurin*, (1863), 13 L. C. J. 175. For other cases involving the question of the alleged shareholders' liability where the defence was set up that the subscription was conditional, see: *Jones v. Montreal Cotton Company*, (1878), 1 L. N. 450; *Stansted, Shefford & Chambly Railway Company v. Brigham*, (1866), 17 L. C. R. 54; *Connecticut & Passumpsic River Railway Company v. Comstock*, (1870), 1 Rev. Leg. 589; *Brown v. Dominion Salvage Company*, (1891), 20 Rev. Leg. 557 — (an appeal from this decision to the Supreme Court was quashed for want of jurisdiction), — s. c., (1892), 20 S. C. R. 203; 21 S. C. R. 72; *Stadacona Insurance Company v. Cabana*, (1882), 2 Dorion 380; *Compagnie de Navigation Union v. Cristin & Valois*, (1878), 2 L. N. 27. The fact that the capital stock of a company has not been wholly subscribed, is not a defence to an action by the company against a shareholder for calls on shares subscribed for by him. — *Rascony v. Cotton Manufacturing Company*, (1886), M. L. R., 2 S. C. 381. Parol evidence is not admissible to prove that a subscription of stock was conditional, when the writing contains, on the face of it, an absolute promise. — *Wilson v. Société de Construction de Soulanges*, (1880), 3 L. N. 79; and see *National Insurance Company v. Chevrier*, (1878), 1 L. N. 591; *Dick v. Canada Jute Company*, (1886), 30 L. C. J. 188; *Banque d'Hochelaga v. Garth*, (1886), M. L. R., 2 S. C. 202. The latter case was reversed by *Queens Bench* on this point and the judgment of the *Queens Bench* was affirmed, with modifications, by the *Privy Council*, *Banque d'Hochelaga v. Murray*, (1890), 15 A. C. 414, 13 L. N. 257. An agreement between a promoter of a company and a subscriber that the latter shall pay for his stock in services, will not bind the company. — *National Insurance Company v. Hatton*, (1879), 24 L. C. J. 26. Illegal acts on the part of the directors of the company, can not be set up in defence to an action for calls



by liquidators or assignees representing the creditors of the company. — *Ross v. The Canada Agricultural Insurance Company*, (1881), 5 L. N. 23. As to the defences available by a shareholder in a suit by the liquidators of the company, which has been placed in liquidation pending the action, see *Victoria Montreal Fire Insurance Company v. Derome*, (1902), Q. R. 21, S. C. 319. In *Compagnie du Cap Gibralter v. Londe*, (1889), M. L. R. 5 S. C. 127, it was held that, although an incorporated company, which has become completely disorganized and insolvent, always retains its legal existence so long as it is not extinct, yet, it can not bring action to recover from shareholders the balance due on their subscriptions to stock unless it has been duly authorized to do so. But see *Compagnie d'Instruments Agricoles v. Hebert*, (1875), 2 Q. L. R. 182. Subscriptions of stock obtained by surprise, fraud, and false statements of the affairs of the company made by its officers and directors are null, and the shareholders thus deceived may recover back what they have paid on their shares. — *Glen Brick Company v. Schackell*, (1870), 2 Rev. Leg. 625. But see *Compagnie de Navigation Union v. Rascony*, (1876), 20 L. C. J. 306. But where the purchaser of shares claiming that he was deceived as to their value, ratifies the contract by acting as shareholder of the company, he can not plead fraud in an action against him, by the company, for the value of the shares. — *Montplaisir v. Banque Ville Marie*, (1889), 18 Rev. Leg. 153, 33 L. C. J. 317. See also, *Coté v. Stadacona Insurance Company*, (1881), 6 S. C. R. 194, reversing, s. c., (1880), 6 Q. L. R. 147, 10 Rev. Leg. 289. Where a shareholder transfers stock, not fully paid, to a solvent person, all the calls then due being paid, and the transfer has been acquiesced in by the company, the original stockholder can not afterwards be called upon to pay the remaining calls. — *Ross v. Barigault*, *Queens Bench*, Quebec, May 7th, 1888.

### § 18. *Transfer of shares.*

**Transfer of shares valid only after entry in register. Exception as to listed shares represented by scrip. 6052.** 1. No transfer of shares, unless made by sale under execution, or under the decree, order, or judgment of a court of competent jurisdiction, shall be valid for any purpose, until entry thereof is duly made in the register of transfers, except for the purpose of exhibiting the rights of the parties thereto towards each other, and of rendering the transferee liable, in the meantime, jointly and severally, with the transferor, to the company and its creditors. 2. This article shall not apply to companies whose stock is listed and dealt with on any recognized stock exchange, by means of scrip commonly in use, indorsed in blank, and transferable by delivery, which shall constitute valid transfers; but the scrip-holder shall not be entitled to vote upon the shares until they are registered in his name in the books of the company.

7 Edw. 7, c. 48, § 51; Imp. §§ 25, 37. An agreement among all the shareholders of a joint stock company to sell or transfer shares on certain conditions, is not equivalent to a by-law of the company for such purpose, and has no effect as against third parties. — *Bernard v. Duplessis Shoe Machinery Company*, (1907), Q. R. 31, S. C. 362; *Bernard v. Desautels*, (1909), Q. R. 19 K. B. 114.

**Liability of directors for transfers in certain cases. How it may be avoided. 6053.** No transfer of shares, whereof the whole amount has not been paid in, shall be made without the consent of the directors; and whenever any transfer of shares not fully paid in has been made with such consent, to a person who is not apparently of sufficient means to fully pay up such shares, the directors shall be jointly and severally liable to the creditors of the company, in the same manner and to the same extent as the transferring shareholder, but for such transfer, would have been; but if any director present when any such transfer is allowed does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware thereof and is able so to do, enter on the minute book of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or, if there is no newspaper there published, then in the newspaper published nearest thereto, such director may thereby and not otherwise, exonerate himself from such liability.

7 Edw. 7, c. 48, § 52.

**Transmission of shares otherwise than by transfer. Petition for order of court in such cases. Effect of order. Notice of petition. Proviso as to costs. 6054.** 1. Whenever the interest in any shares of the capital stock of the company is transmitted by the death of any shareholder or otherwise, or whenever the ownership of or legal right of possession in any shares changes by any lawful means, other than by transfer according to the provisions of this section, and the directors of the company entertain reasonable doubts as to the legality of any claim to such shares, the company may make and file, in the Superior Court in and for the district in which the principal office of the company is situated, a petition in writing,

addressed to the court or to one of the judges thereof, setting forth the facts and the number of shares previously belonging to the person in whose name such shares stand in the books of the company, and praying for an order or judgment adjudicating and awarding the said shares to the persons legally entitled to the same, by which order or judgment the company shall be guided and held fully harmless and indemnified and released from every other claim to the said shares or arising in respect thereof. 2. Notice of the intention to present such petition shall be given to the person claiming such shares, or to the attorney of such person duly authorized for the purpose, who shall, upon the filing of such petition, establish his right to the shares referred to in such petition; and the time to plead and all other proceedings in such cases, shall be the same as those observed in analogous cases before the said Superior Court; provided always, that the costs and expenses of procuring such order or judgment shall be paid by the person or persons to whom such shares are declared lawfully to belong, and that such shares shall not be transferred in the books of the company until such costs and expenses are paid, saving the recourse of such person against any person contesting his right to such shares.

7 Edw. 7, c. 48, § 53.

**Restriction of transfer. 6055.** No share shall be transferable until all previous calls thereon are fully paid in.

7 Edw. 7, c. 48, § 53. A stock certificate issued by a joint stock company is not a documentary title to fully paid up shares, and one who becomes a holder, by endorsement, of such a certificate, is not entitled to be registered as the owner of paid up stock and to a certificate from the company to that effect. — *Beauchemin v. Richelieu Foundry Company*, (1908), Q. R., 34 S. C. 261. Where there was an agreement to transfer shares not fully paid up, and the company refused to register the transferee, it was held, in an action against the transferor for the paid up shares, or their equivalent in cash, that the refusal of the company to transfer terminated the agreement. — *O'Brien v. Weaver*, (1880), 3 L. N. 111.

**Transfer by debtor to company. 6056.** The directors may decline to register any transfer of shares belonging to any shareholder who is indebted to the company.

7 Edw. 7, c. 48, § 55.

**Transfer by representative. 6057.** Any transfer of the shares or other interest of a deceased shareholder, made by his representative, shall, notwithstanding such representative is not himself a shareholder, be of the same validity as if he had been a shareholder at the time of his execution of the instrument of transfer.

7 Edw. 7, c. 48, § 56; Imp. § 29.

### § 19. *Borrowing powers.*

**Powers. 6058.** 1. If authorized by by-law, sanctioned by a vote of not less than two-thirds in value of the subscribed stock of the company represented at a general meeting duly called for considering the by-law, the directors may, from time to time: a) Borrow money upon the credit of the company; b) Limit or increase the amount to be borrowed; c) Issue bonds, debentures, or other securities of the company and pledge or sell the same for such sums and at such prices as may be deemed expedient; but no such bonds, debentures, or other securities shall be for a less sum than one hundred dollars each; d) Hypothecate, or pledge the immoveable property of the company or pledge its moveable property, or do both, to secure any such bonds, debentures, or other securities and any money borrowed for the purposes of the company; e) Give, through their duly authorized officers, to one or more trustees, to secure the payment of the bonds or debentures, a hypothec upon the immoveable property of the company, mentioning the issue and the amount of the bonds or debentures so secured; and such hypothec, after having been registered, shall, notwithstanding article 2017 of the Civil Code, be a valid security in favor of the holders of such bonds or debentures, whether issued before or after the execution of such hypothec. 2. The limitations and restrictions contained in this article shall not apply to the borrowing of money by the company on bills of exchange or promissory notes made, drawn, accepted, or endorsed by or on behalf of the company.

7 Edw. 7, c. 48, § 57. A company may enter into an agreement to pay for loans made to it, in the stock of a company. — *Hibbard v. Baylis*, (1879), 2 L. N. 208.

### § 20. *Dividends.*

**Dividend not to impair capital. Dividend may be supplemented out of reserve fund. Liability of directors. 6059.** 1. No dividend shall be declared which will impair the capital of the company. 2. The annual dividend may, however, be supple-



mented or paid entirely out of the reserve fund, but payment of the dividend in this way must be announced to the shareholders at the annual meeting, and duly authorized by a resolution of the company. 3. In default of such announcement and resolution, the directors of the company shall, subject to the provisions of article 6070, be jointly and severally liable to the creditors of the company for the amount of the dividend so paid out of the reserve fund.

7 Edw. 7. c. 48, § 58.

**Debts due company may be deducted. 6060.** The directors may deduct from the dividends payable to any shareholder, all such sums of money as are due from him to the company, on account of calls or otherwise.

7 Edw. 7. c. 48, § 59.

#### § 21. *Directors and their powers.*

**Board of directors. 6061.** The affairs of the company shall be managed by a board of not more than fifteen and not less than three directors.

7 Edw. 7. c. 48, § 60.

**Provisional directors. Provisions if they are not replaced within six months. 6062.** The persons named as such, in the letters patent, shall be the directors of the company, until replaced by others duly appointed in their stead. If not so replaced within six months from the date of the incorporation of the company, any of said persons or, if they be not living, their heirs or assigns, may cause a meeting to be held by giving fifteen clear days' notice of the time and place thereof in the *Quebec Official Gazette*, and the said persons, their heirs or assigns present at such meeting, may pass by-laws, allot stock, and elect directors.

7 Edw. 7. c. 48, § 61. Where persons allow their names to be used as provisional directors of a projected company for the purpose of obtaining a charter for such company, and sign petitions to that effect, they are liable for fees of the attorney whose services they have retained in the promotion of the company. — *Auger v. Corneillier*, (1892), Q. R., 2 Q. B. 293.

**Failure to elect directors at proper time. 6063.** If, at any time, an election of directors is not made, or does not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any subsequent general meeting of the company duly called for that purpose; and the retiring directors shall continue in office until their successors are elected.

7 Edw. 7. c. 48, § 62.

**Qualification of subsequent directors. 6064.** No person shall be elected or appointed as a director thereafter unless he is a shareholder, owning stock absolutely in his own right, and to the amount required by the by-laws of the company, and not in arrears in respect of any call thereon.

7 Edw. 7. c. 48, § 63.

**By-laws to increase or decrease directors, etc. 6065.** The company may, by by-law, increase to not more than fifteen, or decrease to not less than three, the number of its directors, or may change the company's chief place of business provided such place be within the Province; but no by-law for either of the said purposes, shall be valid or acted upon, unless it is approved by a vote of at least two-thirds in value of the stock represented by the shareholders present at a special general meeting duly called for considering the by-laws, nor until a copy of such by-law, certified under the seal of the company, has been deposited with the Provincial Secretary, and has also been published in the *Quebec Official Gazette*.

7 Edw. 7. c. 48, § 64; 9 Edw. 7. c. 60, §§ 4, 5.

**Election of directors. 6066.** Directors of the company shall be elected by the shareholders, in general meeting of the company assembled, at some place within the Province, at such times, in such manner, and for such term, not exceeding two years, as the letters patent or, in default thereof, as the by-laws of the company prescribe.

7 Edw. 7. c. 48, § 65. Election of directors held at a meeting of which all the shareholders have not been notified, is void. — *Milot v. Perreault*, (1886), 12 Q. L. R., 193. Where an action has been taken to set aside an issue of shares, an action will, at the same time, lie to have the election of directors, who owe their positions to such issue of shares, declared void. — *Ibid.* See also, *Gilman v. Robertson*, (1884), M. L. R., 1 S. C. 5.

**Mode and times of election. 6067.** In the absence of other provisions in such behalf, in the letters patent or by-laws of the company: a) The election of directors shall take place yearly, and all the directors then in office shall retire, but, if otherwise qualified, they shall be eligible for re-election; b) Every election of directors shall be by ballot; c) Any vacancy occurring in the board of directors may be filled,

for the remainder of the term, by the directors, from among the qualified shareholders of the company; d) The directors shall, from time to time, elect from among themselves a president and, if they see fit, a vice-president of the company; and may also appoint all other officers thereof.

7 Edw. 7, c. 48, § 66.

**Indemnification of directors in certain cases. 6068.** Every director of the company may, with the consent of the company, given at any general meeting thereof, from time to time, and at all times, be indemnified and saved harmless out of the funds of the company, from and against all costs, charges and expenses which he sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against him, for or in respect of any act, deed, matter or thing made, done, or permitted by him, in or about the execution of the duties of his office; and also from and against all other costs, charges, and expenses which he sustains or incurs, in or about or in relation to the affairs thereof, except such costs, charges, or expenses as are occasioned by his own wilful neglect or default.

7 Edw. 7, c. 48, § 67.

**Powers, etc., of directors. 6069.** 1. The directors may administer the affairs of the company in all things, and make or cause to be made for it, any kind of contract which it may, by law, enter into. 2. They may, from time to time, make by-laws not contrary to law, or to the letters patent of the company, for the following purposes: a) The regulating of the allotment of stock, the making of calls thereon, the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, and the transfer of stock; b) The declaration and payment of dividends; c) The number of the directors, their term of service, the amount of their stock qualification, and their remuneration, if any; d) The appointment, functions, duties and removal of all agents, officers and servants of the company, the security to be given by them to the company and their remuneration; e) The time and the place within the Province for the holding of the annual meetings of the company, the calling of meetings, regular and special, of the board of directors and of the company, the quorum, the requirements as to proxies, and the procedure in all things at such meetings; f) The imposition and recovery of all penalties and forfeitures which admit of regulation by by-law; g) The conduct, in all other particulars, of the affairs of the company. 3. The directors may, from time to time, repeal, amend, or re-enact such by-laws; but every such by-law (except by-laws made respecting the matters set forth in sub-paragraph d of paragraph 2 of this article) and every repeal, amendment, or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company, duly called for that purpose, shall have effect only until the next annual meeting of the company, and in default of confirmation thereat, shall, at and from that time only, cease to be in force.

7 Edw. 7, c. 48, § 68. As to power of agents to bind corporations by their acts, see § 6024, *supra*, and annotations thereto. A stockholder in a joint stock company may bring an action to account against the corporation, and thereby contest the validity of a by-law made by the board of directors. — *Keys v. Quebec Fire Assurance Company*, (1830), *Stu. K. B.* 425. Directors may dismiss a manager of a company without notice, when the latter is insolent and insubordinate. — *Dick v. Canada Jute Company*, (1886), 30 *L. C. J.* 185. An action will not lie by a member who considers himself aggrieved to correct errors or illegal acts in the government and administration of a corporation until remedies by way of appeal to the domestic tribunal of the corporation, provided by the by-laws or constitution, have been exhausted. — *McIver v. Montreal Stock Exchange*, (1888), *M. L. R.*, 4 *S. C.* 112. The directors of a joint stock company may contract a hypothec which will be binding on the company if made in the interest of the company. — *Savaria v. Paquette*, (1899), *Q. R.*, 20 *S. C.* 314. A corporation which entered into a contract for the purchase of an option, pursuant to a vote of a meeting at which only two directors were present, will not be permitted to repudiate the contract on the ground that a quorum was lacking at the meeting, especially where it appears that the contract was ratified at a subsequent meeting attended by a quorum of the directors. — *Montreal & St. Lawrence Light & Power Company v. Robert*, (1904), *Q. R.*, 25 *S. C.* 473; affirmed by *Kings Bench*, *s. c.*, (1905), *Q. R.*, 14 *K. B.* 108; affirmed by *Privy Council*, *s. c.*, (1906), *A. C.* 196.

## § 22. *Liability of directors and officers.*

**Directors' liability for declaring dividends in certain cases. How it may be avoided. 6070.** If the directors of the company declare and pay any dividend when the company is insolvent, or any dividend the payment of which renders the company insolvent or impairs the capital thereof, or any dividend out of the reserve fund with-



out first having complied with the requirements of article 6059, they shall be jointly and severally liable, as well to the company as to the individual shareholders and creditors thereof, for all the debts of the company then existing, and for all thereafter contracted during their continuance in office; but if any director present when such dividend is declared does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware thereof and able so to do, enter on the minutes of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published then in the newspaper nearest thereto, such director may thereby, and not otherwise, exonerate himself from such liability.

7 Edw. 7, c. 48, § 69. The directors of a company are personally liable to the company, its shareholders and creditors, for all direct and immediate injury arising to them by the fault of such directors. For instance, where directors have declared a dividend out of the capital without the concurrence of the company, its shareholders or creditors, and where third parties have been induced to purchase stock in the company at exaggerated prices, owing to the declaration of fictitious dividends, the directors are liable to such purchasers. — *Banque d'Epargne de Montréal v. Geddes*, (1890), M. L. R., 6 S. C. 243. Although creditors of an insolvent company may complain of payments of fictitious dividends by directors based on augmentation of the value of the company's real property, yet, creditors, who attended the meeting of the company and who approved such dividend, can not claim that they have been misled, and that they would not have purchased shares in the company at such a high price, had they known how the dividend was compiled. *Ibid.* The directors of a joint stock company are not, as a general rule, responsible for the contracts and torts of the company; to render them so, there must have been some individual fault on their part. In the absence of gross neglect or fraud, there is no *lien de droit* between the directors of a company and non-shareholders; the directors occupy merely the position of agents of the company. — *Therien v. Brodie*, (1893), Q. R. 4 S. C. 23. Directors can not divest themselves of their personal responsibility. While they are at liberty to employ such assistants as may be required to carry on the business of the corporation, they are nevertheless responsible for the fault and misconduct of the employees appointed by them, unless the injurious acts complained of be such as could not have been prevented by the exercise of reasonable diligence on their part. — *McDonald v. Rankin*, (1890), M. L. R., 7 S. C. 44. Directors of a company are personally liable for injuries caused to third parties by false representations contained in a report of directors to shareholders; but the injury must be immediate, and not the remote consequence of the representation, and it must appear that the false representation was made with the intent that it should be acted upon by third persons. — *Rhodes v. Starnes*, (1878), 1 L. N. 314. The action against the directors for maladministration appertains to the corporation, but, in default of suit by the corporation, it is competent to a shareholder to institute such suit. — *McDonald v. Rankin*, (1890), M. L. R., 7 S. C. 44.

**No loan to shareholders. 6071.** No loan shall be made by the company to any shareholder. If such loan is made, all directors and other officers of the company making the same, or in anywise assenting thereto, shall be jointly and severally liable for the amount of such loan, with interest, to the company, and also to the creditors of the company for all debts of the company then existing, or contracted between the time of the making of such loan and that of the re-payment thereof.

7 Edw. 7, c. 48, § 70.

**Directors' liability for wages. Limitation thereof, etc. 6072.** The directors of the company shall be jointly and severally liable to the clerks, labourers, servants, and apprentices thereof, for all debts not exceeding six months' wages due for service performed for the company whilst they are such directors respectively; but no director shall be liable to an action therefor, unless the company is sued therefor within one year after the debt becomes due, nor unless such director is sued therefor within one year from the time when he ceased to be such director, nor unless an execution against the company in respect of such debt is returned unsatisfied wholly or in part; and the amount unsatisfied on such execution shall be the amount recoverable with costs from the directors.

7 Edw. 7, c. 48, § 71.

### § 23. General meetings.

**6073. Special meetings.** Shareholders who hold one-fourth part in value of the subscribed stock of the company may, at any time, call a special general meeting hereof for the transaction of any business specified in such written requisition and notice as they make and issue to that effect.

7 Edw. 7, c. 48, § 72; Imp. § 66.

**General meeting, Notice thereof. Votes of shareholders. 6074.** In the absence of other provisions in such behalf in the letters patent or by-laws of the company:

a) Notice of the time and place for holding a general meeting of the company shall be given at least fourteen days previously thereto, in some newspaper published in the place where the head office or chief place of business of the company is situate, or if there is no such newspaper, then in the place nearest thereto in which a newspaper is published; b) At all general meetings of the company, every shareholder shall be entitled to give one vote for each share then held by him. Such votes may be given in person or by proxy — the holder of any such proxy being himself a shareholder — but no shareholder shall be entitled, either in person or by proxy, to vote at any meeting unless he has paid all the calls then payable upon all the shares held by him. All questions proposed for the consideration of the shareholders shall be determined by the majority of votes including that of the chairman who shall also have a casting vote when the votes are equally divided.

7 Edw. 7, c. 48, § 73; Imp. § 67. The rule that in the management of the affairs of a company the will of a majority of shareholders should prevail, applies only in matters that are within the scope and power of its incorporation. Acts that are *ultra vires*, adopted by a majority of shareholders at a regular meeting are null and void. Thus, a lease for 21 years by a manufacturing company, of all its property, plant and accessories, amounts to an implied renunciation of its charter and is *ultra vires*. — *Amyot v. Dominion Cotton Mills Company*, (1909), Q. R., 36 S. C. 35, (1910), Q. R., 38 S. C. 457. A shareholder can not maintain proceedings to annul a resolution, unanimously adopted at a general meeting of shareholders (at which he was present and acquiesced) giving a bonus to the directors on the ground that the charter of the company settled the manner in which the profits were to be used, and no provision was made for such gratuity. — *Cignac v. Cignac*, (1909), Q. R., 37 S. C. 174. — In *Heffernan v. Walsh*, (1886), 33 L. T. J. 46, M. L. R., 2 Q. B. 482, it was held, reversing *Walch v. Heffernan*, (1885), 14 Rev. Leg. 243, that the members of a corporation are not disqualified from voting at an election of its officers, although fines which are still unpaid may have been imposed on such members under the by-laws, if such fines have not been formerly pronounced and such members have not had an opportunity of giving their reasons why such fines should not be paid by them.

#### § 24. *Books of the company.*

**Books to be kept. Their contents. Register of transfers. 6075.** 1. The company shall cause a book or books to be kept by the secretary, or by some other officer specially charged with that duty, wherein shall be kept recorded: a) A copy of the letters patent incorporating the company, and of any supplementary letters patent, and of the preliminary memorandum of agreement and of all by-laws thereof; b) The names, alphabetically arranged, of all persons who are or have been shareholders; c) The address and calling of every such person, while such shareholder, as far as can be ascertained; d) The number of shares of stock held by each shareholder; e) The amounts paid in and remaining unpaid, respectively, on the stock of each shareholder; f) The names, addresses, and callings of all persons who are or have been directors of the company, with the several dates at which each became or ceased to be such director. 2. A book called the register of transfers, shall be provided, and in such book shall be entered the particulars of every transfer of shares in the capital of the company.

7 Edw. 7, c. 48, § 74; Imp. § 25 (1).

**Books to be open for inspection, etc. 6076.** Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open, at the head office or chief place of business of the company, for the inspection of shareholders and creditors of the company, and their representatives, and of any judgment creditor of a shareholder; and every such shareholder, creditor or representative may make extracts therefrom.

7 Edw. 7, c. 48, § 75; Imp. § 30 (1, 2). A person proving himself to have an interest in the affairs of a joint stock company is entitled to a mandamus to compel the directors to allow him to examine the books of the company. — *Hibbard v. Barsalou*, (1865), 1 L. C. L. J. 98. But a shareholder has no right to insist upon an inspection of the register of letters sent and received by the company when orders to the contrary have been given by the directors. — *Murphy v. La Compagnie des Remorqueurs du St. Laurent*, (1866), 16 L. C. R. 300. See also, *Anders v. Hagar*, (1883), 6 L. N. 83. An application for the issuance of an injunction is not the proper proceeding to compel a corporation to allow a shareholder to inspect its books; and where it is not shown that there exists some urgent necessity for interference without which irreparable injury may result an injunction will be refused. *Plamandom v. Blouyn*, (1905), Q. R., 28 S. C. 149.

**Penalty for false entries, refusal of inspection, etc. 6077.** Every director, officer, or servant of the company who knowingly makes or assists in making any untrue entry in any such book, or who refuses or neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected and extracts to be taken



therefrom, shall be liable to a penalty of one hundred dollars for every such untrue entry and for every such refusal or neglect, and also in damages for all loss or injury which any party interested may have sustained thereby.

7 Edw. 7, c. 48, § 76; Imp. §§ 30 (3), 216.

**Penalty for neglect to keep books. 6078.** Every company which neglects to keep such book or books as aforesaid, shall be liable to a penalty not exceeding twenty dollars for each day that such neglect continues, and also in damages for all loss or injury which any party interested may have sustained thereby.

7 Edw. 7, c. 48, § 77; Imp. § 25 (2).

**Books prima facie evidence. 6079.** Such books shall be prima facie evidence of all facts purporting to be thereby stated, in any action, suit or proceeding against the company or against any shareholder.

7 Edw. 7, c. 48, § 78; Imp. § 33.

#### § 25. *Inspection.*

**Appointment of inspector by judge. Report of inspector. Costs. Manner of conducting investigation. Inspection by order of company. Powers of inspector. Duty of officers to produce books, etc. Inspector may examine under oath. Penalty. 6080.** 1. Upon the petition of shareholders representing not less than one fourth in value of the issued capital stock of the company, a Judge of the Superior Court in and for the district in which the chief place of business of the company is situated may, if he deems it necessary, appoint a competent inspector to investigate the affairs and management of the company. The petition shall be supported by such evidence as the Judge may require for the purpose of showing that the petitioners have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same. The inspector shall report to the Judge the result of the investigation. The expense of such investigation shall, in the discretion of the Judge, be defrayed by the company, or by the petitioners, or partly by the company and partly by the petitioners as he may order, and, if he thinks fit, he may require the petitioners to give security to cover the probable cost of the investigation, and he may make necessary rules and prescribe the manner in which the investigation shall be conducted, or he may, if he deems it necessary, examine the officers or directors of the company under oath as to matters that come in question. 2. The company may, by resolution passed at the annual meeting, or at a special general meeting called for the purpose, appoint an inspector to examine into the affairs of the company. The inspector so appointed shall have the same powers and perform the same duties as an inspector appointed by a Judge, except that instead of making his report to the Judge he shall make the same in such manner and to such persons as the company by said resolution directs. 3. All officers and agents of the company, shall produce, for the examination of any such inspector, all books and documents in their custody or power. Any such inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding twenty dollars, in respect of each offence.

7 Edw. 7, c. 48, § 79; Imp. §§ 109, 110. The commissioners appointed by virtue of articles 596 and 598, R. S. Q., to inquire into the affairs of a company, have not the power to order indiscriminately the production of the corporation's books; they can only order the production of books containing entries concerning the matters which they are appointed to investigate. — *In re Armstrong*, (1892), Q. R., 1 S. C. 408. Commissioners appointed under the articles above mentioned have the same power as courts of law to compel witnesses to appear and give evidence before them and can punish for contempt of court, by fine or imprisonment or both, all witnesses who refuse to appear or answer questions put to them, relating to the matter under inquiry. — *Turcotte v. Beique*, (1891), 21 Rev. Leg. 452. Before committing a witness for contempt in not producing the books of the corporation, such witness should be allowed to show cause why he should not be committed. — *In re Armstrong*, *supra*.

**Summonses, notices, etc., how signed. 6081.** Any summons, notice, order, or proceeding requiring authentication by the company, may be signed by any director, manager, or other authorized officer of the company, and need not be under the seal of the company.

7 Edw. 7, c. 48, § 80; Imp. § 117.

**Service of notices upon members. 6082.** Notices to be served by the company upon the shareholders, may be served either personally or by sending them

through the post. in registered letters, addressed to the shareholders at their places of abode as they appear on the books of the company.

7 Edw. 7, c. 48, § 81.

**Service of notice by post. Proof of service. 6083.** A notice or other document served by post by the company on a shareholder, shall be held to be served at the time when the registered letter containing it would be delivered in the ordinary course of post; and to prove the fact and time of service it shall be sufficient to prove that such letter was properly addressed and registered, and was put into the post office, and the time when it was put in, and the time requisite for its delivery in the ordinary course of post.

7 Edw. 7, c. 48, § 82.

**Copy of by-law *prima facie* evidence. 6084.** A copy of any by-law of the company, under its seal, and purporting to be signed by any officer of the company, shall be received as against any shareholder of the company, as *prima facie* evidence of such by-law in all Courts in the Province.

7 Edw. 7, c. 48, § 83.

**Actions between company and shareholders. 6085.** Any kind of action may be prosecuted and maintained between the company and any shareholder thereof.

7 Edw. 7, c. 48, § 84.

**Mode of incorporation how alleged. Proof of incorporation. 6086.** In any action or other legal proceeding, it shall not be requisite to set forth the mode of incorporation of the company, otherwise than by mention of it under its corporate name, as incorporated by virtue of letters patent — or of letters patent and supplementary letters patent, as the case may be — under this section; and the notice in the *Quebec Official Gazette*, of the issue of such letters patent or supplementary letters patent, shall be *prima facie* proof of all things therein contained; and on production of the letters patent, or supplementary letters patent, or of any exemplification or copy thereof, the fact of such notice shall be presumed; and, except in any proceeding by *scire facias* or otherwise for the purpose of rescinding or annulling the same, the letters patent or supplementary letters patent or any exemplification or copy thereof, shall be conclusive proof of every matter and thing therein set forth.

7 Edw. 7, c. 48, § 85.

**Proof may be made by oath. 6087.** Proof of any matter which is necessary to be made under this section may be made by oath.

7 Edw. 7, c. 48, § 86.

**Statement at general meeting. 6088.** The directors of every company shall lay before its shareholders annually, a full statement of the affairs and financial position of the company, at or before each general meeting of the company for the election of directors.

7 Edw. 7, c. 48, § 87.

**Returns to be made. Penalty. 6089.** The company shall make a return to the Provincial Secretary, at any time a written request may be made therefor, containing the following particulars: 1. The amount of the capital of the company, and the number of shares into which it is divided. 2. The number of shares taken from the commencement of the company up to the date of the return. 3. The amount of calls made on each share. 4. The total amount of calls received. 5. The total amount of calls unpaid. 6. The total amount of shares forfeited. 7. The names, addresses, and occupations of the persons who have ceased to be shareholders within the twelve months preceding, and the number of shares held by each of them. If any company, for a space of one month, neglects or refuses to comply with such request, the company shall incur a penalty not exceeding twenty dollars for every day during which such default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits such default, shall incur the like penalty.

7 Edw. 7, c. 48, § 88; Imp. § 26.

#### § 26. *Transitory Provisions.*

**Joint Stock Companies' Incorporation Act not to apply to future companies, etc. 6090.** The *Joint Stock Companies' Incorporation Act* shall not apply to joint stock companies incorporated by letters patent after the first day of July 1907, but the



said act shall continue to govern every joint stock company to which it applied before the said date, until such company shall have been declared, either by an act of the Legislature or by letters patent, to be subject to the provisions hereof.

7 Edw. 7, c. 48, § 89; Imp. §§ 286-294.

### *Forms.*

#### *A. (Article 6008.)*

##### *Petition for Incorporation.*

To His Honour the Lieutenant-Governor of the Province of Quebec:

The petition of \_\_\_\_\_ respectfully  
showeth as follows:

The undersigned petitioners are desirous of obtaining letters patent under the provisions of the *Quebec Companies' Act*, constituting your petitioners and such others as may become shareholders in the company thereby created, a body corporate and politic under the name of \_\_\_\_\_ or such other name as shall appear to you to be proper in the premises.

The undersigned have satisfied themselves and are assured that the proposed corporate name of the company under which incorporation is sought, is not the corporate name of any other known company incorporated or unincorporated, or any name liable to be confounded therewith or otherwise on public grounds objectionable.

Your petitioners are of the full age of twenty-one years.

The purposes for which incorporation is sought by the petitioners are:

The chief place of business of the proposed company will be at \_\_\_\_\_ in the district of \_\_\_\_\_

The amount of the capital stock of the company is to be \$ \_\_\_\_\_

The said stock is to be divided into \_\_\_\_\_ shares of \$ \_\_\_\_\_ each.

The following are the names in full and the address and calling of each of the petitioners with the amount of stock taken by each petitioner respectively:

Petitioners.	Amount of Stock Subscribed.

The said \_\_\_\_\_ will be the first or provisional directors of the company.

A stock-book has been opened and a memorandum of agreement by the petitioners under seal, in accordance with the act, has been executed in duplicate — one of the duplicates being transmitted herewith.

The undersigned therefore request that a charter may be granted constituting them and such other persons as hereafter become shareholders in the company, a body corporate and politic for the purposes above set forth.

Signatures of Witnesses.

Signatures of Petitioners.


Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Note: If any cash has been paid in on stock, or if any property is intended to be accepted on account of stock, it should be stated.

*B. (Article 6008.)**Memorandum of Agreement and Stock Book*

(To be executed in duplicate to be transmitted with the application.)

The . . . . . Company

We, the undersigned, do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of the *Quebec Companies' Act* under the name of The . . . . . Company, or such other name as the Lieutenant-Governor of the Province of Quebec may give to the company, with a capital of . . . . . dollars divided into . . . . . shares of . . . . . dollars each.

And we do hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such company to the said amounts.

In witness whereof we have signed.

Name of Subscriber.	Amount of Subscription.	Date and Place of subscription.		Residence of Subscriber.	Name of Witness.
		Date.	Place.		

*C. (Article 6011.)**Notice of Letters Patent.*

Public notice is hereby given that under the *Quebec Companies' Act* letters patent have been issued by the Lieutenant-Governor of the Province of Quebec, bearing date the . . . . . day of . . . . . incorporating [*here state names, address and calling of each corporator named in the letters patent*], for the purpose of [*here state the undertaking of the company, as set forth in the letters patent*], by the name of [*here state the name of the company as in the letters patent*] with a total capital stock of . . . . . dollars divided into . . . . . shares of . . . . . dollars, and with its principal place of business at (*name of city, or as the case may be*).

Dated at the office of the Provincial Secretary, this . . . . . day of . . . . ., 19 . . . . .

A. V.,  
Provincial Secretary.

*D. (Article 6028.)**Notice of Supplementary Letters Patent granting further Powers.*

Public notice is hereby given that under the *Quebec Companies' Act*, supplementary letters patent, bearing date the . . . . . day of . . . . ., were issued by the Lieutenant-Governor of the Province of Quebec, granting further powers to the . . . . . Company (*here state the other purposes or objects mentioned in the supplementary letters patent*).

Dated at the office of the Provincial Secretary, this . . . . . day of . . . . ., 19 . . . . .

A. B.,  
Provincial Secretary.

*E. (Article 6046.)**Notice of Supplementary Letters Patent changing the Amount of the Capital.*

Public notice is hereby given that, under the *Quebec Companies' Act*, supplementary letters patent, bearing date the . . . . . day of . . . . ., have been issued by the Lieutenant-Governor of the Province of Quebec, increasing (*or reducing, as the case may be*) the capital of (*here state the name of the company*), from . . . . . dollars to . . . . . dollars.

Dated at the office of the Provincial Secretary, this . . . . . day of . . . . ., 19 . . . . .

A. B.,  
Provincial Secretary.

*Section III. Declaration to be made by Incorporated Companies.*

**Declaration to be made. By whom signed. Contents of declaration. Form of declaration. New declaration. 6091.** 1. Every incorporated company, carrying on



any labour, trade or business in this Province (except banks), shall cause to be delivered to the prothonotary of the Superior Court in each district, or to the registrar of each registration division in which it carries on or intends to carry on its operations or business, a declaration in writing to the effect hereinafter provided, made and signed by the president when its chief office or principal place of business is in this Province, or by the principal manager or chief agent in the Province when it has only branches or agencies therein. 2. Such declaration shall state the name of the company, where and how it was incorporated, the date of its incorporation, and where its principal place of business within the Province is situated. 3. Such declaration shall be according to form A or in words to that effect, and shall be produced by the president or the principal manager or chief agent, as the case may be, of every such incorporated company, and filed within sixty days after commencing operations and business. 4. When and so often as any change takes place in the name of the company, or in its principal place of business in the Province, a declaration thereof shall in like manner be made, within sixty days from such change.

R. S. Q. § 4754.

**Entry of declaration. 6092.** The prothonotary and the registrar shall enter such declaration in the books kept by them respectively for the registration of declarations of partnership.

R. S. Q. § 4755.

**Fee. 6093.** The prothonotary and the registrar shall be entitled to a fee of one dollar for the entry of every declaration made under the authority of this section.

R. S. Q. § 4756.

**Penalty. 6094.** A failure to make and file the declarations required by article 6091 shall render each of the incorporated companies above mentioned liable to a fine of two hundred dollars, and the president, principal manager, or chief agent, as the case may be, to a fine of one hundred dollars.

R. S. Q. § 4757; 9 Edw. 7, c. 51, § 1.

**Proviso. 6095.** If the declaration is made and filed after the expiration of the sixty days above mentioned and before any suit for a contravention of this section has been instituted, then the company making and filing such declaration, its president, principal manager, or chief agent, as the case may be, shall no longer be deemed to have been in default.

R. S. Q. § 4758.

**Recovery of fines. 6096.** The fines imposed by this section are recoverable, before any court having jurisdiction in civil cases to the amount of such fine, by any person suing in his own name, or by the Attorney-General in the name of His Majesty.

R. S. Q. § 4759.

**To whom such fines belong. 6097.** One-half of all fines recovered shall belong to the party suing for the same, and the other half to the Crown, to form part of the consolidated revenue fund of the Province, unless the suit be brought on behalf of the Crown only, in which case the whole of the fine shall belong to the Crown for the uses aforesaid.

R. S. Q. § 4760.

### *Form.*

#### *A. (Article 6091.)*

##### *Declaration.*

Province of Quebec, }  
District of                }

The (name) Company.

The (name) Company was incorporated in (name of the country, province, &c.) by (Letters Patent, or as the case may be,) granted, (or registered, as the case may be,) on the (date).

Its principal place of business in the Province of Quebec is at (name of town, &c.)

In testimony whereof, this declaration in duplicate is made and signed by me, (name, address, and calling) the president, (principal manager, or chief agent, as the case may be) of the said company, at (name of place) on the (date).

### *Section IV. Extra-Provincial Corporations and Joint Stock Companies.*

**Extra provincial corporation what to comprise. Exceptions. 6098.** Extra-provincial corporations, for the purposes of this section, comprise all commercial

corporations and joint stock companies not constituted by or in virtue of an act of the Legislature of this Province, or of the Parliament of Canada, of the Legislature of the late Province of Lower Canada, or that of the late Province of Canada, except: a) Loan an investment societies licensed under the provisions of section second of chapter fourth of title eleventh of these Revised Statutes (articles 7158 to 7164); b) Insurance companies, mutual benefit societies and charitable societies, the same being governed by section twenty-second of this chapter (articles 6832 to 7069); c) Corporations and companies incorporated under or in virtue of an act of a Legislature of another Province of Canada in which corporations and companies incorporated under and in virtue of the laws of the Province of Quebec are authorized to do business without being obliged to take out a license therefor.

4 Edw. 7, c. 34, § 1; 9 Edw. 7, c. 62, § 1.

**License required. Until license issued no business to be transacted on behalf of corporation. 6099.** No extra-provincial corporation shall carry on business in the Province, unless a license under this section has been granted to it and unless such license is in force. No company, firm, broker, agent or other person shall, as the representative or agent of or acting in any capacity other than as traveller taking orders for any such extra-provincial corporation, carry on any of its business in the Province, unless such corporation has received such license and unless such license is in force.

4 Edw. 7, c. 34, § 2.

**Proceedings to obtain license. Refusal to grant, etc., license unless name changed. Proviso. 6100.** Such license shall be granted by the Lieutenant-Governor upon petition by the extra-provincial corporation, provided that the corporation: a) Deposits in the office of the Provincial Secretary a copy of its charter, articles of association or other deed constituting the corporation, certified by the officer having the custody of the original; b) Establishes that it is so constituted as to carry out the obligations it may contract; c) Deposits in the office of the Provincial Secretary a power of attorney constituting a chief agent in the Province for the purpose of receiving service in any suit or proceeding against it, and declaring where the principal office of the corporation is to be established; d) Pays the fees that may be fixed for such license by the Lieutenant-Governor in Council; e) Establishes that its name is not that of any other known company, nor liable to be confounded therewith, or otherwise on public grounds objectionable. The Lieutenant-Governor may, at any time, refuse to grant or to continue a license to a company which does not comply with the requirements of this subsection, unless such name be changed or modified to the satisfaction of the Provincial Secretary. Such change or modification of name shall in no way affect the corporate existence, rights, or obligations of the company.

4 Edw. 7, c. 34, § 3; 9 Edw. 7, c. 62, § 2.

**Publication of notice of granting. 6101.** Notice of the granting of such license shall be published by the Provincial Secretary in the *Quebec Official Gazette*, and from the date of such publication such extra-provincial corporation may commence business.

4 Edw. 7, c. 34, § 4.

**Change of chief agent, etc. 6102.** Whenever any extra-provincial corporation changes its chief agent or the location of its chief office, it shall forward to the Provincial Secretary a copy of the new power of attorney concerning the same and notice thereof shall be given in the *Quebec Official Gazette*.

4 Edw. 7, c. 34, § 5.

**Change of name by extra-provincial corporation, etc. New license, etc. 6103.** If an extra-provincial corporation, licensed in virtue of this section, changes its name, it shall send to the Provincial Secretary a copy of the document establishing that such change has been legally effected, and such copy shall be certified by the officer who has charge of the original. A new license may then be granted by the Lieutenant-Governor, and notice thereof shall be given by the Provincial Secretary in the *Quebec Official Gazette*.

4 Edw. 7, c. 34, § 5a; 8 Edw. 7, c. 66, § 1.

**Powers under license. 6104.** Any extra-provincial corporation receiving a license under this section may, subject to the limitations and conditions of the license and of the laws of this Province, and also subject to the provisions of its charter, acquire, hold, mortgage, alienate and otherwise dispose of immoveable property



in the Province, to the same extent as if incorporated by letters patent of the Lieutenant-Governor, with power to carry on the business and exercise the powers embraced in the license.

4 Edw. 7, c. 34, § 6.

**Suspension and revocation of license. Notice thereof. 6105.** If an extra-provincial corporation receiving a license under this section does not observe or comply with the limitations and conditions of such license, or the regulations respecting the appointment and continuance of a representative in the Province, the Lieutenant-Governor in Council may suspend or revoke such license wholly or in part, and may remove such suspension or cancel such revocation and restore such license. Notice of such suspension, revocation, removal or restoration shall be given by the Provincial Secretary in the *Quebec Official Gazette*.

4 Edw. 7, c. 34, § 7.

**Regulations of Lieutenant-Governor in Council. 6106.** The Lieutenant-Governor in Council may, from time to time, make, amend and repeal regulations respecting the following matters: a) The forms of licenses, powers of attorney, applications, notices, statements, and other documents relating to applications and other proceedings under this section; b) The fees to be collected and received for granting the licenses and publication of notices under this section; c) Generally whatever may be necessary for the efficient working of this section.

4 Edw. 7, c. 34, § 8.

**Penalty for doing business for an unlicensed corporation. 6107.** Any person doing business for an extra-provincial corporation which has not complied with the requirements of this section, is liable to a fine not exceeding one hundred dollars for each offence and, in default of payment, to imprisonment not exceeding three months.

4 Edw. 7, c. 34, § 9.

**Prescription and law to govern prosecutions. 6108.** Prosecutions under this section shall be instituted within six months after the date of the offence, and shall be governed by the provisions of Part XV of the Criminal Code.

4 Edw. 7, c. 34, § 10.

**Statements etc., to be laid before Legislature. 6109.** A statement showing the licenses issued under this section during the preceding fiscal year, and the authorized capital of the extra-provincial corporations licensed, and the fee paid for each license, shall be laid before the Legislature at each session thereof.

4 Edw. 7, c. 34, § 11.

**Interpretation. 6110.** Nothing in this section shall prevent articles 6091 to 6097 from applying to extra-provincial corporations.

4 Edw. 7, c. 34, § 14.

## *Section V. Special Provisions respecting certain Companies and Corporations.*

### *§ 1. Subdivision of shares of certain companies and acquisition of immoveables thereby.*

**Subdivision of shares. 6111.** The directors of any company, of which the capital stock is divided into shares being a multiple of one hundred, may pass a by-law declaring that the capital stock of such company shall be divided into shares of one hundred dollars each, and, from and after the passing of such by-law, such capital stock shall be divided into shares of one hundred dollars each.

R. S. Q. § 4761.

**British, United States or Canadian corporations may hold lands in the Province. 6112.** Every company incorporated and existing in Great Britain (including the Channel Islands and the Isle of Man), in the United States of America, or in Canada, shall have the right to acquire and hold any lands and immoveable property in this Province, for its occupation or the prosecution of its business only, any law to the contrary notwithstanding.

R. S. Q. § 4762; 62 Vic. c. 42, § 1.

**Proviso as to certain corporations. 6113.** No such corporation formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the corporation or by the individual members thereof, shall, without the sanction of the Lieutenant-Governor in Council, hold more than ten acres of land; but the Lieutenant-Governor in Council may, by license under the hand of the Provincial Secretary, empower any such corporation to hold lands in such quantity and subject to such conditions as he shall think fit.

R. S. Q. § 4763.

§ 1. *Increase of capital stock by certain companies.*

**Increase of capital of companies, incorporated by special statutes. By-law for that purpose.** 6114. The directors of any company incorporated by special statute may, if they see fit, at any time after the whole capital stock of the company has been allotted and paid in, but no sooner, make a by-law for increasing the capital stock of the company to an amount which they may consider requisite in order to the due carrying out of the objects of the company. Such by-law shall declare the number of the shares of the new stock, and may prescribe the manner in which the same shall be allotted; and, in default of its so doing, the control of such allotment shall be held to vest absolutely in the directors.

R. S. Q. § 4767.

**Coming into force of such by-law.** 6115. No by-law for increasing the capital stock of the company, shall have any force or effect whatever, until after it has been sanctioned by a vote of not less than two-thirds in value of the shareholders, at a general meeting of the company duly called for considering the same, and has been afterwards confirmed by the Lieutenant-Governor in Council.

R. S. Q. § 4768.

**Confirmation of such by-law. Proof before Attorney-General. Power of Attorney-General to swear and hear witnesses.** 6116. 1. At any time, not more than six months after the sanction of such by-law, the directors may petition the Lieutenant-Governor to confirm the same. 2. With such petition, they must produce such by-law, and establish to the satisfaction of the Attorney-General, so that he may report thereon, the due passage and sanction of such by-law, and the bona fide character of the increase of capital thereby provided for. 3. For that purpose the Attorney-General or his assistant may take and keep of record any requisite evidence in writing, under oath or affirmation, and may administer every requisite oath or affirmation.

R. S. Q. § 4769.

**Confirmation by Lieutenant-Governor, etc.** 6117. Upon due proof so made, the Lieutenant-Governor in Council may confirm the said by-law; and notice thereof shall be forthwith given by the Provincial Secretary in the *Quebec Official Gazette*, and, from the publication of such notice, the capital stock of the company shall be increased, to the amount, in the manner, and subject to the conditions set forth in such by-law; and the whole of the stock, as so increased, shall become subject to the provisions of its act of incorporation, in like manner (so far as may be) as though every part thereof had formed part of the stock originally subscribed.

R. S. Q. § 4770.

**Fee to be paid for confirmation of by-law.** 6118. There shall be paid, for the confirmation of such by-law, the same fee as is payable on supplementary letters-patent granted and issued under the Quebec Companies' Act.

R. S. Q. § 4771.

§ 3. *Powers on certain corporations to more readily employ the immovable property in their possession.*

**Powers of limited corporations extended.** 6119. All corporations in this Province, which cannot acquire immoveable property except to a limited amount, under the provisions of their charters, or of the law, may, whenever they dispose of or alienate any immoveable property belonging to them, apply the price thereof to the acquisition of other immoveable property, and also receive the revenues thereof, and employ the same for the objects for which they were constituted.

R. S. Q. § 4772.

*Section VI. Voluntary Winding-up of Joint Stock Companies.*

§ 1. *Method of winding-up.*

**Voluntary winding up of joint stock companies.** 6120. Any joint stock company, incorporated by letters patent or special act, may be wound up voluntarily, whenever the directors deem it expedient that the company shall be dissolved.

R. S. Q. § 4773.

**General meeting.** 6121. The directors shall thereupon convene a general meeting of the shareholders, mentioning in the notice that the dissolution of the company will be proposed at such meeting.

R. S. Q. § 4774.



**Resolution of directors. Formalities. Effect of dissolution. 6122.** The resolution of the directors, declaring it to be expedient that the company should be wound up voluntarily, shall be submitted to the general meeting of the shareholders, and if such meeting pass, by a majority representing not less than two-thirds of the stock, a resolution that the company shall be wound up voluntarily and dissolved, then the company shall forthwith subsist and carry on business for the purpose only of winding up its affairs.

R. S. Q. § 4775.

**Corporate powers continued. 6123.** The corporate state and corporate powers of the company shall continue until its affairs are wound up.

R. S. Q. § 4776.

## § 2. *Liquidators.*

**Appointment of liquidators. 6124.** At the general meeting, a liquidator or liquidators shall be appointed for the purpose of winding up the affairs of the company and of distributing its assets; and thereupon the board of directors shall cease to exist.

R. S. Q. § 4777.

**Vacancy in office of liquidators. Removal of liquidators. 6125.** If any vacancy occurs in the office of liquidator by death, resignation or otherwise, the company may, at a general meeting, fill up such vacancy; and such general meeting may be called by the continuing liquidator or liquidators, or by any shareholder. The company may also, at a general meeting called by any three shareholders, on notice mentioning that the removal of the liquidators or of any liquidator will be proposed, remove such liquidator or liquidators, and appoint another or others in his or their place.

R. S. Q. § 4778.

**Appointment of liquidators by judge. Their removal. 6126.** In default of the shareholders appointing or replacing a liquidator or liquidators, any Judge of the Superior Court, in the district where the company has its chief office or principal place of business, may, on application of a shareholder, after a default of fifteen days, appoint a liquidator or liquidators. The Judge may also, on due cause shown, remove any liquidator; and he may, after a default of fifteen days on the part of the shareholders to do so, appoint another.

R. S. Q. § 4779.

**Registration of notice of winding up resolution. Notice to Provincial Secretary and publication. 6127.** Notice of the resolution passed by the shareholders for the winding up and dissolution of the company, shall be registered forthwith in the office of the prothonotary of the Superior Court for the district, and in the registry office for the registration division, in which the company has its chief office or principal place of business. Notice of such resolution shall also be given to the Provincial Secretary, and shall be published by him in the *Quebec Official Gazette*.

R. S. Q. § 4780.

**Duties of liquidators. 6128.** The liquidator or liquidators shall take into his or their custody, and under his or their control, all the assets of the company, and shall, subject however to such limitations as may be determined by the resolution of the shareholders for the dissolution of the company, have power: 1. To bring or defend any action or other judicial proceeding in the name and on behalf of the company. 2. To carry on the business of the company, so far as may be necessary for the beneficial winding-up of the same, and to collect all moneys due to it. 3. To sell the moveable and immoveable property of the company, by public auction or private sale, and either in the lump or in parcels; provided that, at a general meeting of the shareholders, the majority have given their consent to such sale in the lump. 4. To execute, in the name and on behalf of the company, all deeds, acquittances, receipts, and other documents; 5. To draw, accept, make, or endorse bills of exchange, or promissory notes, in the name and on behalf of the company; and to raise upon the security of the assets of the company, from time to time, any requisite sums of money. 6. To do and execute whatever else may be necessary for winding up the affairs of the company and distributing its assets, including the power to compromise, at discretion, all claims and rights belonging to the company.

R. S. Q. § 4781.

**Powers when several are appointed. 6129.** When several liquidators are appointed, their powers may be validly exercised by the majority of them.

R. S. Q. § 4782.

**Payment of debts, etc. 6130.** The liquidator or liquidators shall first pay the debts of the company, and the costs, charges, and expenses of winding it up, and shall afterwards distribute the balance of the proceeds of the assets among the shareholders, according to their rights and interests in the company.

R. S. Q. § 4783.

**Collection of sums due. 6131.** The liquidator or liquidators shall recover and collect unpaid calls, in full or proportionately as the case may require, from shareholders in default, should he or they deem it necessary; but in case of the non-collection in whole or in part of such unpaid calls, the shareholders in default shall only rank in the distribution when those who have paid more shall have been ranked for the excess so paid by them.

R. S. Q. § 4784.

**Remuneration of liquidators. 6132.** The shareholders shall fix the remuneration of the liquidator or liquidators; and also whether or not he or they shall give security for his or their administration, specifying when security shall be given and the amount thereof.

R. S. Q. § 4785.

**If winding-up lasts over a year. 6133.** If the winding-up continues for more than one year, the liquidator or liquidators shall call a general meeting of the shareholders, at the end of the first year, and at the end of each succeeding year, or so soon thereafter as may be convenient; and he or they shall lay before such meetings an account, showing his or their acts and dealings, and the manner in which the operations for the winding-up have been conducted during the preceding year.

R. S. Q. § 4786.

**Statement after winding-up by liquidators. 6134.** As soon as the affairs of the company are fully wound up, the liquidator or liquidators shall make up an account showing the cash on hand at the date on which the company was placed in liquidation, the property of the company disposed of, the amounts realized, the sums paid, and generally the manner in which such winding-up has been conducted, and shall attest the same before a justice of the peace; and thereupon he or they shall call a general meeting of the company for the purpose of laying such account before the shareholders, and of having the same confirmed.

R. S. Q. § 4787.

**Notice to Provincial Secretary. Registration. 6135.** The liquidator or liquidators shall make a return to the Provincial Secretary of such meeting having been held, and also of such meeting having confirmed the account, showing the manner in which the winding-up has been conducted. The Provincial Secretary shall cause such return to be registered in the registers of the Province; and forthwith, on the registration thereof, the company shall be dissolved.

R. S. Q. § 4788.

### § 3. *Proceedings after dissolution.*

**Notice of dissolution by Provincial Secretary. Registration of notice. 6136.** The Provincial Secretary shall, without delay, publish a notice of the dissolution of the company in the *Quebec Official Gazette*, and the liquidator or liquidators shall also forthwith register a notice of the dissolution in the office of the prothonotary of the Superior Court for the district, and in the registry office for the registration division in which the company had its chief office or principal place of business.

R. S. Q. § 4789.

**Deposit with Provincial Treasurer. 6137.** Within thirty days after the date of the dissolution of the company, the liquidator or liquidators shall deposit with the Provincial Treasurer the amount of all debts and of all dividends which may then be unclaimed and unpaid, with a statement thereof attested before a justice of the peace; and the money so deposited shall be treated as a deposit under section twenty-fourth of chapter fifth of title fourth of these Revised Statutes respecting judicial and other deposits (articles 1480 to 1493); and when claimed shall be paid over to the persons entitled thereto.

R. S. Q. § 4790.

**Deposit of books, accounts, etc. 6138.** Within the same period of thirty days, the liquidator or liquidators shall deposit, in the office of the prothonotary of the Superior Court for the district in which the company had its chief office or principal place of business, the books, accounts, and documents of the company, and also the sworn account submitted to the shareholders and confirmed by them, showing



the manner in which the winding-up has been conducted, and a duplicate of the sworn statement of the moneys deposited with the Provincial Treasurer.

R. S. Q. § 4791.

**Neglect to deposit. 6139.** If the liquidator or liquidators neglects or neglect to deposit the moneys with the Provincial Treasurer, or to deposit the books, accounts and documents as provided in articles 6137 and 6138, he or they severally shall be liable to a penalty not exceeding ten dollars for every day during which he or they is or are in default.

R. S. Q. § 4792.

**Rendering of accounts. 6140.** The liquidator or liquidators shall be bound to render his or their accounts and to pay over the moneys for which he is or they are accountable, under the same obligations and penalties as a curator to the property of a dissolved corporation under the Civil Code.

R. S. Q. § 4793.

## Sale of Goods.

### a) Civil Code.<sup>1)</sup>

#### *Title Fifth. Of Sale.*

##### *Chapter First. General Provisions.*

**1472.** Sale is a contract by which one party gives a thing to the other for a price in money which the latter obliges himself to pay for it. It is perfected by the consent alone of the parties, although the thing sold be not then delivered, subject nevertheless to the provisions contained in article 1027 and to the special rules concerning the transfer of registered vessels.

C. N. 1582, 1583; C. C. 1025, 2098, 2359 et seq.

**1473.** The contract of sale is subject to the general rules relating to contracts and to the effects and extinction of obligations declared in the title of obligations, inasmuch as it is otherwise specially provided in this Code.

C. N. 1584.

**1474.** When things moveable are sold by weight, number or measure, and not in the lump, the sale is not perfect until they have been weighed, counted or measured; but the buyer may demand the delivery of them or damages according to circumstances.

C. N. 1585; C. C. 1026, 1060, 1151.

**1475.** The sale of a thing upon trial is presumed to be made upon a suspensive condition, when the intention of the parties to the contrary is not apparent.

C. N. 1588.

**1476.** A simple promise of sale is not equivalent to a sale, but the creditor may demand that the debtor shall execute a deed of sale in his favour according to the terms of the promise, and, in default of so doing, that the judgment shall be equivalent to such deed and have all its legal effects; or he may recover damages according to the rules contained in the title of obligations.

C. N. 1589.

**1477.** If a promise of sale be accompanied by the giving of earnest, each of the contracting parties may recede from it; he who has given the earnest, by forfeiting it, and he who received it, by returning double the amount.

C. N. 1590; C. C. 1235, s. 4.

**1478.** A promise of sale with tradition and actual possession is equivalent to sale.

C. N. 1589.

**1479.** The expense of the title deed and other accessories to a sale is borne by the buyer, unless it is otherwise stipulated.

C. N. 1593.

**1480.** The articles of this title, in so far as they affect the rights of third persons, are subject to the special modifications and restrictions contained in the title of Registration of Real Rights.

<sup>1)</sup> The references (C. N.) are to the corresponding articles of the Code Napoleon.

1481. Tavern-keepers, or others, selling to persons other than travellers, intoxicating liquors to be drunk on the spot, have no action for the recovery of the price of such liquors.

*Chapter Second. Of the Capacity to Buy or Sell.*

1482. The capacity to buy or sell is governed by the general rules, relating to the capacity to contract, contained in chapter first, of the title of obligations.

C. N. 1594; C. C. 985 et seq.

1483. Husband and wife cannot enter into a contract of sale with each other.

C. N. 1595.

1484. The following persons cannot become buyers, either by themselves or by parties interposed, that is to say: Tutors or curators, of the property of those over whom they are appointed, except in sales by judicial authority; Agents, of the property which they are charged with the sale of; Administrators or trustees, of the property in their charge whether of public bodies or of private persons; Public officers, of national property, the sale of which is made through their ministry. The incapacity declared in this article cannot be set up by the buyer; it exists only in favour of the owner and others having an interest in the thing sold.

C. N. 1596; C. C. 290, 1706; C. C. P. 660, 748.

1485. Judges, advocates, attorneys, clerks, sheriffs, bailiffs, and other officers connected with courts of justice can not become buyers of litigious rights which fall under the jurisdiction of the Court in which they exercise their functions.

C. N. 1597; C. C. 1583.

*Chapter Third. Of Things which may be Sold.*

1486. Everything may be sold which is not excluded from being an object of commerce by its nature or destination or by special provision of law.

C. N. 1598; C. C. 1059.

1487. The sale of a thing which does not belong to the seller is null, subject to the exceptions declared in the three next following articles. The buyer may recover damages of the seller, if he were ignorant that the thing did not belong to the latter.

C. N. 1599.

1488. The sale is valid if it be a commercial matter, or if the seller afterwards become owner of the thing.

1489. If a thing lost or stolen be bought in good faith in a fair or market, or at a public sale, or from a trader dealing in similar articles, the owner cannot reclaim it, without reimbursing to the purchaser the price he has paid for it.

C. N. 2280; C. C. 2268.

1490. If the thing lost or stolen be sold under the authority of law, it cannot be reclaimed.

C. C. P. 668, 2005a.

*Chapter Fourth. Of the Obligations of the Seller.*

*Section I. General Provisions.*

1491. The principal obligations of the seller are: 1. The delivery, and 2. The warranty of the thing sold.

C. N. 1603.

*Section II. Of delivery.*

1492. Delivery is the transfer of a thing sold into the power and possession of the buyer.

C. N. 1604.

1493. The obligation of the seller to deliver is satisfied when he puts the buyer in actual possession of the thing, or consents to such possession being taken by him, and all hindrances thereto are removed.

C. N. 1605; C. C. 1165.

1494. The delivery of incorporeal things is made by the delivery of the titles, or by the use which the buyer makes of such things with the consent of the seller.

C. N. 1607.

1495. The expenses of the delivery are at the charge of the seller, and those of removing the thing are at the charge of the buyer, unless it is otherwise stipulated.

C. N. 1608.



**1496.** The seller is not obliged to deliver the thing if the buyer do not pay the price, unless a term has been granted for the payment of it.

C. N. 1612.

**1497.** Neither is the seller obliged to deliver the thing, when a delay for payment has been granted, if the buyer since the sale have become insolvent, so that the seller is in imminent danger of losing the price, unless the buyer gives security for the payment at the expiration of the term.

C. N. 1613.

**1498.** The thing must be delivered in the state in which it was at the time of the sale, subject to the rules relating to deterioration contained in the title of obligations. From the time of sale all the profits of the thing belong to the buyer.

C. N. 1614.

**1499.** The obligation to deliver the thing comprises its accessories and all that has been designed for its perpetual use.

C. N. 1615; C. C. P. 1574.

**1500.** The seller is obliged to deliver the full quantity sold as it is specified in the contract, subject to modifications hereinafter specified.

C. N. 1616; C. C. P. 780.

**1501.** If an immoveable be sold with a statement, in whatever terms expressed, of its superficial contents, either at a certain rate by measurement, or at a single price for the whole, the seller is obliged to deliver the whole quantity specified in the contract; if such delivery be not possible, the buyer may obtain a diminution of the price according to the value of the quantity not delivered. If the superficial contents exceed the quantity specified, the buyer must pay for such excess of quantity or he may at his option give it back to the seller.

C. N. 1617, 1618, 1619.

**1502.** In either of the cases stated in the last preceding article, if the deficiency or excess of quantity be so great in comparison with the quantity specified, that it may be presumed the buyer would not have bought if he had known it, he may abandon the sale and recover from the seller the price, if paid, and the expenses of the contract, without prejudice in any case to his claim for damages.

C. N. 1618, 1619, 1620; C. C. P. 785.

**1503.** The rules contained in the last two preceding articles do not apply, when it clearly appears from the description of the immoveable and the terms of the contract that the sale is of a certain determinate thing, without regard to its quantity by measurement, whether such quantity is mentioned or not.

**1504.** The action for supplement of price on the part of the seller, or for diminution of price, or for vacating the contract, on the part of the buyer, is subject to the general rules of prescription.

C. N. 1622; C. C. 2210.

**1505.** If two immoveable properties be sold by the same contract, at a single price for the whole, with a declaration of the contents of each and in one the quantity be less than stated and in the other greater, the deficiency of the one is compensated by the excess of the other so far as it goes, and the action of the buyer or seller is modified accordingly.

C. N. 1623.

### *Section III. Of Warranty. General Provisions.*

**1506.** The warranty to which the seller is obliged in favour of the buyer is either legal or conventional. It has two objects: 1. Eviction of the whole or any part of the thing; 2. The latent defects of the thing.

C. N. 1625.

**1507.** Legal warranty is implied by law in the contract of sale without stipulation. Nevertheless the parties may, by special agreement, add to the obligations of legal warranty, or diminish its effect, or exclude it altogether.

C. N. 1627.

#### *§ 1. Of Warranty against Eviction.*

**1508.** The seller is obliged by law to warrant the buyer against eviction of the whole or any part of the thing sold, by reason of the act of the former, or of any right existing at the time of the sale, and against incumbrances not declared and not apparent at the time of the sale.

C. N. 1626.

**1509.** Although it be stipulated that the seller is not obliged to any warranty, he is nevertheless obliged to a warranty against his personal acts. Any agreement to the contrary is null.

C. N. 1628.

**1510.** In like manner, when there is a stipulation excluding warranty, the seller in case of eviction is obliged to return the price of the thing sold, unless the buyer knew at the time of the sale the danger of eviction or had bought at his own risk.

C. N. 1629; C. C. 1576.

**1511.** Whether the warranty be legal or conventional, the buyer in case of eviction, has a right to claim from the seller: 1. Restitution of the price. 2. Restitution of the fruits in case he is obliged to pay them to the party who evicts him. 3. The expenses incurred, as well in his action of warranty against the seller as in the original action. 4. Damages, interest, and all expenses of the contract. Subject nevertheless to the provision contained in the article next following.

C. N. 1630; C. C. 2236.

**1512.** If in the case of warranty the causes of eviction were known to the buyer at the time of the sale, and there be no special agreement, the buyer has a right to recover only the price of the thing sold.

**1513.** The seller is obliged to make restitution of the whole price of the thing sold, although, at the time of the eviction, it be found to be diminished in value, or deteriorated, either by the neglect of the buyer, or by a fortuitous event; unless the buyer has derived a profit from the deterioration caused by him, in which case the seller may deduct from the price a sum equal to such profit.

C. N. 1631, 1632.

**1514.** If the thing sold be found, at the time of eviction, to have increased in value, either by or without the act of the buyer, the seller is obliged to pay him such increased value over the price at which the sale was made.

C. N. 1633.

**1515.** The seller is obliged to indemnify the buyer, or to cause him to be indemnified, for all repairs and useful expenditures made by him upon the property sold, according to their value.

C. N. 1634.

**1516.** If the seller have sold the property of another in bad faith, he is obliged to reimburse the buyer for all expenditures laid out by him upon it.

C. N. 1635.

**1517.** If the buyer suffer eviction of a part only of the thing, or of two or more things sold as a whole, which part is nevertheless of such importance in relation to the whole that he would not have bought without it, he may vacate the sale.

**1518.** If in the case of eviction of a part of the thing or things sold as a whole, the sale be not vacated, the buyer has a right to claim from the seller the value, of such part, to be estimated proportionally upon the whole price, and also damages to be estimated according to the increased value of the thing at the time of eviction.

C. N. 1637.

**1519.** If the property sold be charged with a servitude not apparent and not declared, of such importance that it may be presumed the buyer would not have bought, if he had been informed of it, he may vacate the sale or claim indemnity, at his option, and in either case may bring his action as soon as he is informed of the existence of the servitude.

C. N. 1638.

**1520.** Warranty against eviction ceases in case the buyer fails to call in the seller within the delay prescribed in the Code of Civil Procedure if the latter prove that there existed sufficient ground of defence to the action of eviction.

C. N. 1640; C. C. P. 177, § 4, 183 et seq.

**1521.** The buyer may enforce the obligation of warranty when, without the intervention of the judgment, he abandons the thing sold or admits the incumbrance upon it, if he prove that such abandonment or admission is made by reason of a right which existed at time of sale.

## § 2. Of Warranty against latent Defects.

**1522.** The seller is obliged by law to warrant the buyer against such latent defects in the thing sold, and its accessories, as render it unfit for the use for which



it was intended, or so diminish its usefulness that the buyer would not have bought it, or would not have given so large a price, if he had known them.

C. N. 1641.

**1523.** The seller is not bound for defects which are apparent and which the buyer might have known of himself.

C. N. 1642.

**1524.** The seller is bound for latent defects even when they were not known to him unless it is stipulated that he shall not be obliged to any warranty.

C. N. 1643.

**1525.** When several principal things are sold together as a whole, so that the buyer would not have bought one of them without the other, the latent defect in one entitles him to vacate the sale for the whole.

**1526.** The buyer has the option of returning the thing and recovering the price of it or of keeping the thing and recovering a part of the price according to an estimation of its value.

C. N. 1644.

**1527.** If the seller knew the defect of the thing, he is obliged not only to restore the price of it, but to pay all damages suffered by the buyer. He is obliged in like manner in all cases in which he is legally presumed to know the defects.

C. N. 1645.

**1528.** If the seller did not know the defects or is not legally presumed to have known them, he is obliged only to restore the price and to reimburse to the buyer the expenses caused by the sale.

C. N. 1646.

**1529.** If the thing perish by reason of any latent defect which it had at the time of the sale, the loss falls upon the seller who is obliged to restore the price of it to the buyer and otherwise to indemnify him as provided in the two last preceding articles. If it perish by the fault of the buyer or by a fortuitous event, the value of the thing in the condition in which it was, at the time of the loss, must be deducted from his claim against the seller.

C. N. 1647.

**1530.** The redhibitory action, resulting from the obligation of warranty against latent defects, must be brought with reasonable diligence, according to the nature of the defect and the usage of the place where the sale is made.

C. N. 1648.

**1531.** In sales made under process of execution there is no obligation of warranty against latent defects.

C. N. 1649.

#### *Chapter Fifth. Of the Obligations of the Buyer.*

**1532.** The principal obligation of the buyer is to pay the price of the thing sold.

C. N. 1650.

**1533.** If the time and place of payment be not fixed by agreement, the buyer must pay at the time and place of the delivery of the thing.

C. N. 1651.

**1534.** The buyer is obliged to pay interest on the price in the cases following: 1. In case of a special agreement, from the time fixed by such agreement. 2. In case the thing sold be of a nature to produce fruits or other revenues, from the time of entering into possession of it. But if a term be stipulated for the payment of the price, the interest is due only from the expiration of such term. 3. In case the thing be not of a nature to produce fruits or revenues, from the time of the buyer being put in default.

C. N. 1652.

**1535.** If the buyer be disturbed in his possession or have just cause to fear that he will be dissturbed by any action, hypothecary or in revendication, he may delay the payment of the price until the seller causes such disturbance to cease or gives security, unless there is a stipulation to the contrary.

C. N. 1653.

**1536.** The seller of an immoveable cannot demand the dissolution of the sale by reason of the failure of the buyer to pay the price, unless there is a special stipulation to that effect.

C. N. 1654.

**1537.** The stipulation and right of dissolution of the sale of an immoveable, by reason of non-payment of the price, are subject to the rules relating to the right

of redemption contained in articles 1547, 1548, 1549, 1550, 1551, 1552. The right can in no case be exercised after the expiration of ten years from the time of sale.  
C. C. 816, 2100, 2102, 2248.

**1538.** The judgment of dissolution by reason of non-payment of the price is pronounced at once, without any delay being granted by it for the payment of the price; nevertheless the buyer may pay the price with interest and costs of suit at any time before the rendering of the judgment.

**1539.** The seller cannot have possession of the thing sold, upon the dissolution of the sale by reason of non-payment of the price until he has repaid to the buyer such part of the price as he has received, with the costs of all necessary repairs, and of such improvements as have increased the value of the thing, to the amount of such increased value. If there improvements be of a nature to be removed, he has the option of permitting the buyer to remove them.

**1540.** The buyer is obliged to restore the thing with the fruits and profits received by him, or such portion thereof as corresponds with the part of the price remaining unpaid. He is also answerable to the seller for the deteriorations of the property which have been caused by his fault.

**1541.** The seller is held to have abandoned his right to recover the price when he has brought an action for the dissolution of the sale by reason of the non-payment of it.

**1542.** A demand of the price by action or other legal proceeding does not deprive the seller of his right to obtain the dissolution of the sale by reason of non-payment.

**1543.** In the sale of moveable things the right of dissolution by reason of non-payment of the price can only be exercised while the thing sold remains in the possession of the buyer, without prejudice to the seller's right of revendication as provided in the title of Privileges and Hypothecs. In the case of insolvency such right can only be exercised during the thirty days next after the delivery.

C. N. 1654; C. C. 1998, 1999, 2000.

**1544.** In the sale of moveable things the buyer is obliged to take them away at the time and place at which they are deliverable. If the price have not been paid the dissolution of the sale takes place, in favour of the seller, of right and without the intervention of a suit, after the expiration of the day agreed upon for taking them away, or if there be no such agreement, after the buyer has been put in default in the manner provided in the title of Obligations; without prejudice to the sellers claim for damages.

C. N. 1657; C. C. 1165.

## **b) Acts, 1910, c. 39. An Act to amend the Civil Code, respecting Bulk Sales of Merchandise (4th June, 1910).**

**C. C., new chapter and articles added.** 1. The following Chapter and articles are inserted in the Civil Code, after chapter ninth of title fifth of book third:

### *Chapter Ninth a. Bulk Sales.*

**"Bulk sale" defined. 1569 a.** The words "bulk sale" within the meaning of this Chapter, include and mean any sale or transfer of a stock in trade or of merchandise, including transfers of license certificates for the sale of intoxicating liquor, made, directly or indirectly, outside the ordinary course of the seller's business, whether the sale or transfer comprises the whole or nearly the whole of such stock in trade or merchandise, or whether it relates only to an interest in the affairs or business of the seller.

**Certain affidavit required in certain case. Form of affidavit. 1569 b.** Any person who, directly or indirectly, buys in bulk a stock in trade or merchandise, including the transfer of a license certificate for the sale of intoxicating liquor, shall, before paying the purchase price, wholly or in part, and whether in cash or on time, obtain from the seller or his agent, or if the seller is a company or a partnership, from the president, secretary, or manager of such company or partnership, an affidavit containing the names and addresses of the persons who have sold him the said stock in trade or merchandise and who have not been paid, and the amounts due or to become due to each of such persons as the price or part of the price there-



**Coming into force.** 2. This act shall come into force on the 1st day of January, 1911.

*Seller's Affidavit.*

That the following names and addresses are the names and addresses of all my creditors (or of all the creditors or the company or firm) who have supplied me (or it) with the effects or merchandise or any part thereof which I have sold or agreed to sell (or which the company or firm has sold or agreed to sell) and that the amounts opposite their names are the amounts, which are due to them or which are still to become due.

[illegible]

That I have not (or that the company or firm has not) any other creditors than those hereinbefore mentioned, so far as the said effects or merchandise or any part thereof, are concerned.  
Sworn before me

at.....  
this .... day of .....  
19 ..

## Factors. Civil Code.

**1735.** A broker is one who exercises the trade and calling of negotiating between parties the business of buying or selling or other lawful transactions.

He may be the mandatary of the parties and bind both by his acts in the business for which he is engaged by them.

**1736.** A factor or commission-merchant is an agent who is employed to buy or sell goods for another, either in his own name or in the name of his principal, for which he receives a compensation commonly called a commission.

**1737.** Brokers and factors are subject to the general rules declared in this title, when these are not inconsistent with the articles of this chapter.

**1738.** A factor whose principal resides in another country is personally liable to third persons with whom he contracts, whether the name of the principal be known or not. The principal is not liable on such contracts to third parties, unless it is proved that the credit was given to both principal and factor, or the principal alone.

**1739.** Any person may contract for the purchase of goods with any agent entrusted with their possession or to whom they have been consigned, and may receive the same from such agent and pay him the price thereof, and such contract and payment is binding upon the owner of the goods, notwithstanding the purchaser has notice that he is contracting only with an agent.

**1740.** Any agent entrusted with the possession of the goods, or of the documents of title thereto, is deemed the owner thereof for the following purposes, that is to say: 1. To make a sale or contract, as mentioned in the last preceding article; 2. To entitle the consignee of goods consigned by such agent, to a lien thereon for any money or negotiable security advanced or given by him to or for the use of such agent, or received for him by such agent for the use of the consignee, in like manner as if such agent were the true owner of the goods; 3. To give validity to any contract or agreement, by way of pledge, lien or security, made in good faith with such agent, as well for an original loan, advance or payment made upon the security of the goods or documents, as for any other or continuing advance in respect thereof; 6. To make such contract binding upon the owner of the goods and all other persons interested therein, notwithstanding the person claiming such pledge or lien had notice that he was contracting only with an agent.

**1741.** In case any person having a valid lien or security or any goods or documents of title or negotiable security, in respect of a previous advance upon a contract with agent, gives up the same to such agent, upon a contract for the pledge, lien or security of other goods, or of another document or security, by such agent delivered to him in exchange, to be held upon the same lien as the goods, document or security so given up, then, such new contract, if in good faith, is deemed a valid contract, made in consideration of a present advance in money, within the provisions of this chapter, but the lien acquired under such new contract, on the goods, document or security, deposited in exchange, cannot exceed the value of the goods, document or security, so delivered up and exchanged.

**1742.** Such contracts only are valid as are mentioned in this chapter, and such loans, advances and exchanges only are valid as are made in good faith and without notice that the agent making the same has no authority so to do, or that he is acting in bad faith against the owner of the goods.

**1743.** Loans, advances and exchanges in good faith though made with notice of the agent not being the owner, but without notice of his acting without authority bind the owner and all other persons interested in the goods, documents or security, as the case may be.

**1744.** No antecedent debt owed by an agent entrusted with the possession of the goods or the documents of title thereto, can be the subject of any lien or pledge



of such goods or documents, nor can the agent for any purpose relating to such goods deviate from the orders of authority received from his principal.

1745. Bills of lading, warehousekeeper's or wharfinger's receipts or orders for delivery of goods, bills of inspection of potash or pearlash, and all other documents used in the ordinary course of business, as proof of the possession or control of goods, or purporting to authorize, either by endorsement or by delivery, the possessor of any such document to transfer or receive goods thereby represented, are deemed documents of title within the provisions of this chapter.

1746. Any agent possessed of any document of title, whether derived immediately from the owner of the goods, or obtained by reason of the agent having been entrusted with the possession of the goods, or of any document of title thereto, is deemed to be entrusted with the possession of the goods represented by such document of title.

1747. Any contract pledging of giving a lien upon any document of title, is deemed a pledge of and lien upon the goods to which it relates, and the agent is deemed the possessor of the goods or documents of title, whether the same be in his actual custody or be held by any other person for him or subject to his control.

1748. When a loan or advance is made in good faith, to an agent entrusted with and in possession of goods or documents of title, on the faith of any contract in writing to consign, deposit, transfer, or deliver such goods, or documents of title, and the same are actually received by the person making the loan or advance, either at the time of the contract or at a time subsequent thereto, without notice that the agent is not authorised to make the pledge or security, such loan or advance is deemed a loan or advance upon the security of the goods or documents of title within the provisions of this Chapter.

1749. Every contract, whether made directly with the agent or with a clerk or other person on his behalf, is deemed a contract with such agent.

1750. Every payment, whether made by money, bill of exchange or other negotiable security, is deemed an advance within the provisions of this Chapter.

1751. Every agent in possession of goods or documents as aforesaid is for the purposes of this chapter taken to be entrusted therewith by the owner, unless the contrary is shewn in evidence.

1752. Nothing contained in this Chapter lessens or affects the civil responsibility of the agent for the breach of any obligation, or the non-fulfilment of his orders or authority.

1753. Notwithstanding any of the foregoing articles, the owner may redeem any goods or documents of title pledged as aforesaid, at any time before the same have been sold, upon repayment of the amount of the lien thereon, or restoration of the securities in respect of which the lien exists, and upon payment or satisfaction to the agent, of any sum of money for or in respect of which such agent is entitled to retain the goods or documents by way of lien against such owner; or he may recover from the person with whom any goods or documents have been pledged, or who has any lien thereon, any balance or sum of money remaining in his hands as the produce of the sale of the goods, after deducting the amount of the lien under the contract.

1754. In case of the bankruptcy of any agent, and in case the owner of the goods redeem the same, he is held, in respect of the sum paid by him on account of the agent for such redemption, to have paid the same for the use of such agent before his bankruptcy, or in case the goods have not been so redeemed, the owner is deemed a creditor of the agent for the value of the goods so pledged at the time of the pledge, and may in either case claim or set off the sum so paid, or the value of such goods, as the case may be.

## Affreightment and Bills of Lading.<sup>1)</sup>

### a) Civil Code.

#### *Title Third. Of affreightment.*

##### *Chapter First. General Provisions.*

2407. Contracts of affreightment are either by charter party, or for the conveyance of goods in a general ship.

<sup>1)</sup> See also the Dominion Acts relating to these topics, reprinted, *supra*.

2408. The contract may be made by the owner or the master of the ship or by the ship's husband as agent of the former. If made by the master, it binds himself, and also the owner of the ship; unless it is made at a place where the owner or ship's husband is present, and they disavow the contract, in which case it binds the master only. If the ship be hired by a party who sublets it, he is subject in contracts of affreightment to the same rules as if he were owner.

2409. The ship, with her equipments, and the freight are bound to the performance of the obligations of the lessor and the cargo to the performance of the obligations of the lessee or freighter.

2410. If before the departure of the vessel there be a declaration of war or interdiction of trade, with the country to which she is destined, or by reason of any other event of irresistible force, the voyage can not be prosecuted, the contract is dissolved, without either being liable in damages. The expense of loading and unloading the cargo is borne by the freighter.

2411. If the port of destination be closed, or the ship detained by irresistible force, for a time only, the contract subsists and the master and freighter are mutually bound to await the opening of the port and the liberation of the ship; without either of them being entitled to damages. The rule applies equally if the obstruction arise during the voyage; and no increase of freight can be demanded.

2412. The freighter may nevertheless unload the goods during the detention of the ship for the causes stated in the last preceding article; subject to the obligation of reloading after the obstruction has ceased, or of indemnifying the lessor for the full freight; unless the goods are of a perishable nature and can not be replaced, in which case freight is due only to the place of the discharge.

2413. Contracts of affreightment and the obligations of the parties under them, are subject to the rules relating to carriers contained in the title Of Lease and Hire, when these are not inconsistent with the article of this title.

#### *Chapter Second. Of the Charter-Party.*

2414. Affreightment by charter-party may be either of the whole ship or of some principal part of it, and for a determined voyage or a specified time.

2415. The charter-party, or memorandum of charter-party, usually specifies the name and burden of the ship with a stipulation that she is tight and staunch and well furnished and equipped for the voyage. It also contains stipulations as to the time and place of loading, the day of sailing, the rate and payment of freight, and the conditions of demurrage, with a declaration of the fortuitous events which exempt the lessor from liability, and such other covenants as the parties may see fit to add.

2416. If the time of loading and unloading the ship, and the demurrage be not agreed upon, they are regulated by usage.

2417. When goods are put on board of a ship in pursuance of a charter-party the master signs a bill of lading for them to the effect mentioned in article 2420.

2418. If the whole of the ship be leased, but it be not wholly loaded by the lessee, the master can not receive other cargo without his consent; in case of any other cargo being received the lessee is entitled to the freight of it.

#### *Chapter Third. Of the Conveyance of Goods in a General Ship.*

2419. The contract for the conveyance of goods in a general ship is that by which the master or the owner of a ship destined for a particular voyage engages separately with various persons, unconnected with each other, to convey their respective goods according to the bill of lading to the place of their destination and there to deliver them.

#### *Chapter Fourth. Of the Bill of Lading.*

2420. The bill of lading is signed and delivered by the master or purser, in three or more parts, of which the master retains one; the freighter also keeps one, and sends one to the consignee. Besides the name of the parties and of the ship, it states the nature and quantity of the goods shipped, with their marks and numbers in the margin, and the place of their delivery, the name of the consignee, the place of shipping and of ship's destination, with the rate and manner of payment of the freight, and primage and average.



**2421.** When by the bill of lading the delivery of the goods is to be made to a person named or to his assigns, such person may transfer his right by endorsement and delivery of the bill of lading, and the ownership of the goods and all rights and liabilities in respect thereof are held to pass thereby to the indorsee; subject nevertheless to the rights of third persons.

**2422.** The freighter or lessee upon the signing and delivery to him of the bill of lading, is bound to return the receipts given by the master for the goods shipped. The bill of lading, in the hands of a consignee or endorsee, is conclusive evidence against the party signing it; unless there is fraud, of which the holder is cognizant.

*Chapter Fifth. Of the Obligations of the Owner or Lessor and of the Master.*

**2423.** The lessor is obliged to provide a vessel of the stipulated burthen, tight and staunch, furnished with all tackle and apparel necessary for the voyage, and with a competent master and a sufficient number of persons of skill and ability to navigate her, and so to keep her to the end of the voyage. The master is obliged to take on board a pilot, when by the law of the country one is required.

**2424.** The master is obliged to receive the goods, and carefully arrange and stow them in the ship, and to sign such bills of lading as may be required by the freighter or lessee, according to article 2420, upon receiving from him the receipts given for the goods.

**2425.** The goods must not be stowed on deck without the consent of the freighter unless in a particular trade or in inland or coasting voyages, where there is an established usage to that effect. If without such consent or usage the goods be so stowed and are lost by peril of the sea the master is personally liable.

**2426.** The ship must sail on the day fixed by the contract, or, if no day be fixed within a reasonable time, according to circumstances and usage; and must proceed to her destination without deviation. If by the fault of the master the ship be delayed in her departure, or during the voyage, or at the place of discharge, or any loss or injury occur, he is liable in damages.

**2427.** The master is obliged to exercise all needful care of the cargo, and, in case of wreck, or other obstruction to the voyage by a fortuitous event or irresistible force, he is obliged to use the diligence and care of a prudent administrator for the preservation of the goods, and for their conveyance to the place of destination, and for that purpose to engage another ship, if it be necessary.

**2428.** On the completion of the voyage, and after due compliance with the laws and regulations of the port, the master is obliged to deliver the goods without delay to the consignee or his assignee, on production of the bill of lading and payment of the freight and other charges due in respect of it.

**2429.** The goods must be delivered in conformity with the terms of the bill of lading and according to the law or usage observed in the place of delivery.

**2430.** Whenever any vessel has arrived at its destination in any port in Lower Canada, and the master thereof has notified the consignee either by public advertisement or otherwise, that such cargo has reached the place designated in the bill of lading, such consignee is bound to receive the same within twenty-four hours after notice; and thereafter such cargo, so soon as placed on the wharf, is at the risk and charges of the consignee or owner.

**2431.** The time allowed for the discharge of cargoes consisting of certain kinds of merchandise is regulated by the laws respecting the discharging of cargoes of vessels.

**2432.** Neither the owner nor master is exempt from liability for loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of the ship.

**2433.** The owner of a sea-going ship is not liable for the loss or damage occasioned to any goods, wares, merchandise, and article of any kind, on board any such vessel or delivered to him for conveyance therein, without his actual fault or privity, or the fault or neglect of his agents, servants, or employees: 1. By reason of fire, or the dangers of navigation; 2. By reason of any defect in, or the nature of, the goods themselves or from armed robbery or other irresistible force; or 3. By reason of any robbery, theft, embezzlement, removal, or secreting of any gold, silver, diamonds, watches, jewels, or precious stones, or valuable securities, or articles of great value, not being ordinary merchandise, unless the true nature and value thereof have at the time of their delivery for conveyance, been declared by

the owner or shipper thereof to the carrier or agent or servant, and entered in the bill of lading, or otherwise in writing.

2434. In any case of loss of life or personal injury, damage or loss to anything on board of a sea-going ship without any actual fault or privity on the part of the owner of the vessel on board of which or through the fault of which the loss happened, such owner is not responsible for the damage or the loss occasioned to an amount exceeding the sum of thirty-eight dollars and ninety-two cents per ton of the ships registered tonnage in the case of sailing vessels, and of the gross tonnage, without deduction from the engine room in case of steam vessels. The owner, however, remains always responsible in the same manner for every such loss and damage arising on distinct occasions to the same extent, as if no other loss or damage had arisen.

## *Chapter Sixth. Of the Obligations of the Lessee.*

### *Section I. General Provisions.*

2437. The principal obligations of the lessee are: 1. To load the ship with the stipulated cargo, and within the time specified by the contract, or, if no time be specified, within a reasonable delay; 2. To pay the freight, with primage and average, and demurrage when any is due.

2438. The lessee can not put on board any prohibited or uncustomed goods, by which the ship may be subjected to detention or forfeiture, or goods of a dangerous nature, without notice to the master or owner.

2439. If the lessee fail to load the ship fully, as agreed by the charter-party, or if after loading, he withdraw the goods before the departure of the ship or during the voyage, he is liable to pay the whole freight, and to indemnify the master for all expenses and liabilities arising from such withdrawal.

2440. If the ship be delayed in her departure, or during the voyage, by the fault of the freighter, he is liable for demurrage and other charges.

2441. If the lessee agree to furnish a return cargo, and fail to do so, and the ship of necessity return unladen, the lessee is obliged to pay the whole freight, subject in the latter case, to the deduction of such amount as the ship may have earned on the return voyage.

### *Section II. Of Freight, Primage, Average, and Demurrage.*

2442. Freight is the recompense payable for the lease of a ship, or for carrying goods upon a lawful voyage to the place of their destination. In the absence of express stipulation it is not due until the carriage of the goods is completely performed, except in the cases specified in this section.

2443. The amount of freight is regulated by the agreement in the charter-party, or bill of lading, at a gross sum for the whole ship, or a certain part of it, or at a fixed rate per ton or package, or otherwise. If not regulated by agreement, the rate is estimated upon the value of the service performed, according to the usage of trade.

2444. The amount of freight is not affected by the longer or shorter duration of the voyage, unless the agreement be to pay a certain sum by the month, or week, or other division of time, in which case the freight begins to run, if not otherwise stipulated, from the commencement of the voyage, and so continues, as well during its course, as during all unavoidable delay not occasioned by the fault of the master or lessor; subject nevertheless to the exception contained in the next following article.

2445. If the ship be detained by the order of a sovereign power, freight payable by the time does not continue to run during such detention. The wages of the seamen and the expense of their maintenance are in such case a subject of general average.

2446. The master may discharge, at the place of loading, goods found in his ship, if they have not been declared, or he may recover freight upon them, at the usual rate paid, at the place of loading, for goods of a like nature.

2447. If the ship be obliged to return with her cargo, by reason of a prohibition of trade occurring, during the voyage, with the country to which she is bound, freight is due upon the outward voyage only, although a return cargo has been stipulated.



**2448.** If, without any previous fault of the master or lessor, it becomes necessary to repair the ship in the course of the voyage, the freighter is obliged either to suffer the necessary delay or to pay the whole freight. In case the ship can not be repaired, the master is obliged to engage another; if he be unable to do so, freight is due only in proportion to the part of the voyage which is accomplished.

**2449.** Freight is due upon the goods which the master has of necessity sold to repair the ship, or to supply it with provisions and other urgent necessities, and he is obliged to pay for such goods the price which they would have brought at the place of destination. This rule applies equally although the ship be afterwards lost on the voyage, but in that case the price is that at which the goods were actually sold.

**2450.** Freight is payable upon the goods cast overboard for the preservation of the ship and of the remainder of the cargo, and the value of such goods is to be paid to the owner of them by contribution on general average.

**2451.** Freight is not due upon goods lost by shipwreck, taken by pirates, or captured by a public enemy, or which without the fault of the freighter have wholly perished by a fortuitous event, otherwise than as mentioned in the last preceding article. If the freight or any portion of it have been paid in advance, the master is bound to return it, unless there is an agreement to the contrary.

**2452.** If the goods be recaptured or saved from the shipwreck, freight is due to the place of capture or wreck, and if they be afterwards conveyed by the master to their place of destination, the whole freight is due, subject to salvage.

**2453.** The master can not keep the goods in his ship in default of payment of the freight; but at the time of unloading, he may prevent them from being carried away, or cause them to be seized. He has a special privilege upon them while they remain in his possession or the possession of his agent, for the payment of his freight, with primage and accustomed average, as expressed in the bill of lading.

**2454.** The consignee, or other authorized person who receives the goods, is bound to grant a receipt for them to the master; and the acceptance of goods, under a bill of lading by which delivery is to be made to the consignee or his assigns, he or they paying freight, renders the person so receiving them liable for the freight due upon them, unless the person is the known agent of the shipper.

**2455.** Goods which are diminished in value or damaged by reason of intrinsic defect in them, or by a fortuitous event, can not be abandoned for freight. But if without any fault of the freighter, casks containing wine, oil, honey, molasses, or other like things, have leaked so much that they are nearly or altogether empty, the casks may be abandoned in satisfaction of the freight.

**2456.** The obligation to pay primage and average, which are mentioned in the bill of lading, is subject to the same rules as the liability for freight; the primage is payable to the master in his own right, unless there is a stipulation to the contrary.

**2457.** Demurrage is the compensation to be paid by the freighter for the detention of the ship beyond the time agreed upon, or allowed by usage, for loading and discharging.

**2458.** Any person who receives the goods under a bill of lading importing an obligation to pay demurrage, is liable for such demurrage as may become due on the discharge of the goods; subject to the rules declared in article 2454.

**2459.** Demurrage under express contract is due for all delays which are not caused by the shipowner or his agents. It does not begin to be computed until the goods are ready to be discharged, after which, if the stipulated time have expired, a further reasonable time must be allowed for their discharge.

**2460.** If the time, conditions, and rate of demurrage be not agreed upon, they are regulated by the law and usage of the port when the claim arises.

## b) Revised Statutes, 1909.

### § 1. *Transfer of bills of lading.*

Bill of lading, etc., may be endorsed and received as collateral security for advances, etc. Effect of endorsement. Sale of goods, if advances, etc., not paid. 7457.

Any bill of lading, or any receipt given by a warehouseman, miller, wharfinger, master of a vessel, or carrier, for cereal grains, goods, wares, or merchandise, stored or deposited, or to be stored or deposited, in any warehouse, mill, or other place in this Province, or shipped in any vessel, or delivered to any carrier for carriage from any place to any part of this Province, or through the same, or on the waters bordering thereon, or from the same to any other place, and whether such cereal grains are to be delivered upon such receipt in kind or converted into flour, may, by endorsement thereon by the owner of, or person entitled to receive such cereal grains, goods, wares or merchandise or his attorney or agent, be transferred as collateral security for the payment of any bill of exchange or note or of any debt due. Such endorsement vests in the endorsee from the date of such endorsement, all the right and title of the endorser to or in such cereal grains, goods, wares or merchandise, subject to the right of the endorser to have the same re-transferred to him, if such bill, note or debt be paid when due. In the event of the non-payment of such bill, note or debt when due, the endorsee may sell the said cereal grains, goods, wares or merchandise, and retain the proceeds or so much thereof as will be equal to the amount due upon such bill, note or debt, with any interest or costs returning the overplus, if any, to such endorser.

**Warehouseman, etc., may give a certificate, etc. 7458.** When any warehouseman, miller, wharfinger, master of a vessel, or carrier, by whom a receipt may be given, in such capacity, for cereal grains, goods, wares, or merchandise, is at the same time the owner of or entitled himself (otherwise than in his capacity of warehouseman, miller, wharfinger, master of a vessel, or carrier), to receive such cereal grains, goods, wares, or merchandise, any such receipt, or any acknowledgment or certificate intended to answer the purpose of such receipt, given and endorsed by such person, shall be as valid and effectual as if the person giving such receipt, acknowledgment or certificate, and endorsing the same, were not one and the same person.

**Advances to give first lien on the goods. 7459.** All advances made on the security of any bill of lading, receipt, acknowledgment or certificate, shall give and be held to give to the person making such advances, a claim for the re-payment of such advances on the grain, goods, wares, or merchandise therein mentioned, prior to and by preference over the claim of any unpaid vendor.

**Goods not to be held beyond a certain time. When security must be transferred. Goods not to be sold without notice to owner. 7460.** No such cereal grains, goods, wares, or merchandise, shall be held in pledge for any period exceeding six months; and no transfer of any such bill of lading or receipt shall be made to secure the payment of any bill, note or debt, unless the same is negotiated or contracted at the same time with the endorsement of such bill of lading or receipt. No sale of any cereal grains, goods, wares, or merchandise, shall be made, unless ten days' notice of the time and place of such sale has been given by registered letter transmitted through the post office to the owner of such cereal grains, goods, wares, and merchandise prior to the sale thereof.

## § 2. *Transfer of cove receipts.*

**Cove receipts, etc. Effect of endorsement. Sale of goods if advances not paid. 7461.** Any cove-receipt, or any receipt given by a cove-keeper or by the keeper of any wharf, yard, harbor, or other place, for timber, boards, deals, staves, or other lumber there laid up, stored, or deposited, or any bill of lading or receipt given by a master of a vessel, or by a carrier, for timber, boards, deals, staves, or other lumber shipped in such vessel or delivered to such carrier for carriage from any place to any part of this province or through the same, or on the waters bordering thereon, or from the same to any other place may, by endorsement thereon, by the owner of or person entitled to receive such timber, boards, deals, staves or other lumber, or his attorney or agent, be transferred as collateral security for the payment of any bill of exchange or note or of any debt due. Such endorsement vests in the endorsee, from the date of such endorsement, all the right and title of the endorser to or in such timber, boards, deals, staves, or other lumber, subject to the right of the endorser to have the same re-transferred to him, if such bill, note or debt be paid when due. In the event of the non-payment of such bill, note or debt when due, such endorsee may sell the said timber, boards, deals, staves, or other lumber, and retain the proceeds, or so much thereof as will be equal to



the amount due upon such bill, note, or debt, with any interest or costs, returning the overplus, if any, to such endorser.

**Cove-keeper, etc., owning or being entitled to timber, etc. 7462.** Where any cove-keeper, or keeper of any wharf, yard, harbor or other place, or master of a vessel, or carrier by whom a receipt or bill of lading may be given in such capacity for timber, boards, deals, staves, or other lumber, is at the same time the owner of or entitled himself (otherwise than in the capacity of cove-keeper, or of keeper of a wharf, yard, harbor, or other place, or of master of a vessel, or carrier) to receive such timber, boards, deals, staves, or other lumber, any such receipt or bill of lading, or any acknowledgment or certificate intended to answer the purpose of such receipt or bill of lading, given and endorsed by such person, shall be as valid and effectual as if the person giving such receipt or bill of lading, acknowledgment, or certificate, and endorsing the same, were not one and the same person.

**Timber, etc., how long to be held. When security must be transferred. Timber not to be sold without notice to owner. Sale to be by auction. Notice thereof. Meaning of term "published nearest." 7463.** Such timber, boards, deals, staves, or other lumber, shall not be held in pledge for any period exceeding twelve months; and no transfer of any such receipt or any bill of lading shall be made to secure the payment of any bill of exchange, note or debt, unless the same is negotiated or contracted at the same time with the endorsement of such receipt or bill of lading. No sale of any timber, boards, deals, staves, or other lumber, shall be made unless thirty days' notice of the time and place of such sale shall have been given, by registered letter transmitted through the post office, to the owner of such timber, boards, deals, staves, or other lumber, prior to the sale thereof. Every such sale shall be made by public auction, after notice thereof by advertisement, stating the time and place thereof, for at least eight days consecutively, in at least two daily newspapers, one in French and the other in English, published in or nearest to the place where such sale is to be made. A daily newspaper is deemed to be published nearest to a place, if no other daily newspaper be published in the same language in or nearer to such place; and if in any place where any such sale by auction is to be made, there be not any newspaper published daily in either language, but some newspaper or newspapers be published there in such language less often than daily, then such advertisement shall also be published in every issue of such local newspaper, or of at least one of such local newspapers, during the time of its being published in daily newspapers.

**Advances to give a first lien on timber, etc. 7464.** All advances made on the security of any such cove-receipt or bill of lading, or receipt, acknowledgment, or certificate, shall give to the person making such advances a claim for the payment of such advances on the timber, deals, staves, or other lumber therein mentioned, prior to and by preference over the claim of any unpaid vendor or other creditor, save and except claims for wages of labor performed in making and transporting such timber, boards, deals, staves, or lumber.

## Marine Insurance.

### Civil Code.

#### *Title Fifth. Of Insurance.*

#### *Chapter First. General Provisions.*

#### *Section I. Of the Nature and Form of the Contract.*

**2468.** Insurance is a contract whereby one party, called the insurer or underwriter undertakes for a valuable consideration, to indemnify the other, called the insured, or his representatives, against loss or liability from certain risks or perils to which the object of the insurance may be exposed, or from the happening of a certain event.

**2469.** The consideration or price which the insured obliges himself to pay for the insurance, is called the premium. It does not belong to the insurer until the risk begins, whether he has received it or not.

**2470.** Marine insurance is always a commercial contract; other insurances are not by their nature commercial, but they are so when made for a premium by

persons carrying on the business of insurers; subject to the exception contained in the next following article.

**2471.** Mutual insurance is not commercial. It is governed by special statutes, and by the general rules contained in this title, in so far as they are applicable and not inconsistent with such statutes.

**2472.** All persons capable of contracting may insure objects in which they have an interest an which are subject to risk.

**2473.** Incorporeal things as well as corporeal, and also human life and health, may be the object of insurance.

**2474.** A person has an insurable interest in the object insured whenever he may suffer direct and immediate loss by the destruction or injury of it.

**2475.** The interest insured must exist at the time of the loss unless the policy contains the stipulation of lost or not lost. The rule is subject to certain exceptions in life insurance.

**2476.** Insurance may be made against all losses by inevitable accident, or irresistible force, or by events over which the insured has no control: subject to the general rules relating to illegal and immoral contracts.

**2477.** The insurer may effect a re-insurance, and the insured may insure the solvency of the first insurer.

**2478.** In case of loss the insured must, with reasonable diligence, give notice thereof to the insurer; and he must conform to such special requirements as may be contained in the policy with respect to notice and preliminary proof of his claim, unless they are waived by the insurer. If it be impossible for the insured to give notice or to make the preliminary proof within the delay specified in the policy, he is entitled to a reasonable extension of time.

**2479.** Insurance is divided with respect to its object and the nature of the risks, into three principal kinds: 1. Marine insurance; 2. Fire insurance; 3. Life insurance.

**2480.** The contract of insurance is usually witnessed by an instrument called a policy of insurance. The policy either declares the value of the thing insured and is then called a valued policy, or it contains no declaration of value, and is then called an open policy. Wager or gaming policies, in the object of which the insured has no insurable interest, are illegal.

**2481.** The acceptance of an application for insurance constitutes a valid agreement, to insure, unless the insurer is required by law to contract in another form exclusively.

**2482.** Policies of insurance may be transferred by indorsement and delivery, or by delivery alone, subject to the conditions contained in them. But marine policies and fire policies can be transferred only to persons having an insurable interest in the object of the policy.

**2483.** In the absence of any consent or privity on the part of the insurer, the simple transfer of the thing insured does not transfer the policy. The insurance is thereby terminated, subject to the provisions contained in article 2576.

**2484.** The announcements and clauses which are essential or usual in policies of insurance, are declared in articles hereinafter contained relating respectively to the different kinds of insurance.

## *Section II. Of Representation and Concealment.*

**2485.** The insured is obliged to represent to the insurer fully and fairly every fact which shows the nature and extent of the risk, and which may prevent the under-taking of it, or affect the rate of premium.

**2486.** The insured is not obliged to represent facts known to the insurer, or which from their public character and notoriety he is presumed to know; nor is he obliged to declare facts covered by warranty express or implied, except in answers to inquiries made by the insurer.

**2487.** Misrepresentation or concealment, either by error or design, of a fact of a nature to diminish the appreciation of the risk or change the object of it, is a cause of nullity. The contract may in such case be annulled although the loss has not in any degree arisen from the fact misrepresented or concealed.

**2488.** Fraudulent misrepresentation or concealment on the part either of the insurer or of the insured is in all cases a cause of nullity of the contract in favour of the innocent party.



**2489.** The obligation of the insured with respect to representation is satisfied when the fact is substantially as represented and there is no material concealment.

*Section III. Of Warranties.*

**2490.** Warranties and conditions are a part of the contract and must be true if affirmative, and if promissory must be complied with; otherwise the contract may be annulled notwithstanding the good faith of the insured. They are either expressed or implied.

**2491.** An express warranty is a stipulation or condition expressed in the policy, or so referred to in it as to make part of the policy. Implied warranties will be designated in the following chapters relating to different kinds of insurance.

*Chapter Second. Of Marine Insurance.*

*Section I. General Provisions.*

**2492.** The policy of marine insurance contains: The name of the insured or of his agent; A description of the object insured, of the voyage, of the commencement and termination of the risk, and of the perils insured against; The name of the ship and master, except when the insurance is on a ship or ships generally; The premium; The amount insured; The subscription of the insurance with its date. It also contains such other clauses and announcements as the parties may agree upon.

**2493.** Insurance may be made on ships, on goods, on freight, on bottomry and respondentia loans, on profits and commissions, on premiums of insurance, and on all other things appreciable in money and exposed to the risks of navigation, with the exception of seamen's wages, upon which insurance can not be legally made, and subject to the general rules relating to unlawful and immoral contracts.

**2494.** Insurance may be made for any kind of voyage or transport by sea, river or canal navigation and either for the whole voyage or for a limited time.

**2495.** The risk of loss or damage of the thing insured by perils of the sea is essential to the contract of marine insurance. The risks usually specified in the policy are tempest and shipwreck, stranding, collision, unavoidable change of the ship's course or of her voyage, or of the ship herself, fire, jettison, plunder, piracy, capture, reprisal, and other casualties of war, detention by order of a sovereign power, barratry of the master and mariners, and generally all other perils and chances of navigation by which loss or damage may arise. The parties may limit or extend the risks by special agreement.

**2496.** If the time of the commencement and termination of the risk be not specified in the policy, it is regulated according to article 2598.

**2497.** Marine policies in cases of doubtful meaning are construed by the established and known usage of the trade to which the policy relates; such usage is held to be a part of the policy when it is not otherwise expressly provided.

**2498.** An insurance made after the loss or the arrival of the object of it, is null, if, at the time of insuring, the insured had a knowledge of the loss, or the insurer of the arrival. Such knowledge is presumed where information might have been received in the usual course and at the usual rate of transmission.

*Section II. Of the Obligations of the Insured.*

**2499.** The principal obligations of the insured relate: to the premium; to representation and concealment; to warranties and conditions; to abandonment, which is treated in the fifth section.

*§ 1. Of the Premium.*

**2500.** The insured is obliged to pay the amount or rate of premium agreed upon, according to the terms of the contract. If the time of payment be not specified, it is payable without delay.

**2501.** In the following cases the premium is not due and if it have been paid it may be recovered back, the contract being void: 1. When the risk insured against does not occur, either by reason of the entire breaking up of the voyage before the departure of the ship, or for other causes, even those arising without fraud from the act of the insured; 2. When there is a want of insurable interest, or any

other cause of nullity, without fraud on the part of the insured. The insurer in these cases is entitled to one-half per cent. on the sum insured, for his indemnification, unless the policy is illegal, or rendered null by fraud, misrepresentation, or concealment on his part. If the policy be illegal, there is no right of action for the premium, and none to recover it back if it have been paid.

2502. The preceding article applies when the risk occurs for part only of the value insured, for the non-payment or return of a proportional part of the premium, according to circumstances and the discretion of the Court.

### § 2. *Of Representation and Concealment.*

2503. The rules concerning representation, and the effect of misrepresentation, or concealment are declared in chapter one, section two.

### § 3. *Of Warranties.*

2504. The general rules relating to warranties are contained in chapter one, section three.

2505. It is an implied warranty in every contract of marine insurance that the ship shall be seaworthy at the time of sailing. She is seaworthy when she is in a fit state, as to repairs, equipments, crew and in all other respects, to undertake the voyage.

2506. In insurance for a ship-owner, it is an implied warranty that the ship shall be properly documented and conducted according to the laws and treaties of the country to which she belongs and to the law of nations.

## *Chapter Third. Of the Obligations of the Insurer.*

2507. The principal obligation of the insurer is to pay to the insured all losses suffered by him by reason of any of the risks insured against according to the terms of the contract. His liability is subject to the rules contained in the foregoing section and to the rules and conditions hereinafter declared.

2508. The insurer is not liable for losses suffered after a deviation or change of the risk made without his consent, by changing, contrary to the established usage, the ship's course or the voyage, or the ship herself, by the order of the insured, unless the deviation or change is of necessity, or for the purpose of saving human life. The insurer is nevertheless entitled to the premium if the risk has commenced.

2509. The insurer is not liable for loss or damage arising from intrinsic defect in the thing, or caused by the culpable act or gross negligence of the insured.

2510. The insurer is not liable for loss by barratry of the master or mariners, unless there is an agreement to the contrary.

2511. Barratry is any act of wilful misconduct by the master or mariners whereby loss is caused to the owners or freighters.

2512. The insurer is not liable for the ordinary charges known as petty averages such as pilotage, towage, tonnage, anchorage, clearance, or duties imposed upon the ship or cargo.

2513. The limitation of the insurer's liability, for particular average under a certain amount and for the loss or damage of certain articles enumerated in the common memorandum of warranty to be free from average, is regulated by the terms of such memorandum contained in the policy. If there be no memorandum of warranty, the general rules declared in this title apply.

2514. A contract of insurance made fraudulently on the part of the insured for a sum exceeding the value of the object of it, may be annulled by the insurer who in such case is entitled to one-half per cent. upon the amount insured.

2515. If in the case specified in the last preceding article there be no fraud, the contract is valid to the amount of the value of the object insured. The insurer is not entitled to the full premium upon the amount insured in excess of the value but to one-half per cent. only.

2516. If there be several contracts of insurance effected without fraud upon the same object, and against the same risks, and the first contract insures the full value of the object, it alone can be enforced. The subsequent insurers are free from liability and are bound to return the premium, reserving a half per cent. Subject



nevertheless to such special agreement and conditions as may be contained in the policies of insurance.

**2517.** When in the case specified in the last preceding article the total value of the object is not insured by the first contract, the subsequent insurers are liable for the surplus according to the date of their respective contracts; subject to the same restriction.

**2518.** If the subsequent insurance be fraudulent on the part of the insured, he is obliged to pay the whole premium on such insurance, but is not entitled to recover anything upon it.

**2519.** When there is a partial loss of an object insured by several insurances to an amount not exceeding its full value, the insurers are liable for it rateably in proportion to the sums for which they have respectively insured.

**2520.** When the insurance is made separately upon goods to be laden on different ships, if all the goods be placed in one of the ships or in any number of them less than the whole, the insurer is liable only for the sums insured on the goods which under the contract were to be placed in such ship or ships, although all the ships specified in the contract be lost. He is entitled nevertheless to one half per cent. of premium upon the remainder of the total amount insured.

#### *Section IV. Of Losses.*

**2521.** Loss for which the insurer is liable is either total or partial.

**2522.** Total loss may be either absolute or constructive. It is absolute when the thing insured is wholly destroyed or lost. It is constructive when, by reason of any event insured against, the thing though not wholly destroyed or lost becomes of little or no value to the insured, or the voyage and adventure are lost or rendered not worth pursuing. Before the insured can claim for a constructive total loss he must make an abandonment as declared in the following section.

**2523.** All losses not included within the meaning of the preceding article are partial losses.

**2524.** When a loss by collision occurs by a fortuitous event without either party being in fault, it falls upon the injured ship without recourse against the other, and is a loss by the perils of the sea for which the insurer is liable under the general terms of the policy.

**2525.** When the collision is caused by the fault of the master or mariners of one of the ships, the party in fault is liable to the other, and if the insured ship be the one injured by the fault of the master or mariners of the other, the insurer is liable under the general clause, but if the injury be caused by the fault of the master or mariners of the insured ship, the insurer is not liable. If the fault amounts to barratry, it is subject in so far as the insurer is concerned, to the provision contained in article 2510.

**2526.** If the cause of the collision be unknown or it be impossible to determine by whose fault it was caused, the damages are borne in equal portions by both ships; the insurer is liable in such case under the general clause.

**2527.** Extraordinary expenses necessarily incurred for the sole benefit of some particular interest, as for the ship alone or the cargo alone, and damages sustained by the ship alone or the cargo alone, and not voluntarily suffered for the common safety, are particular average losses for which the insurer is liable to the insured under the general terms of the policy, when these losses are caused by perils of the sea.

**2528.** Loss by salvage is a loss by the perils of the sea for which the insurer is liable under the general terms of the policy. Special rules relating to salvage are contained in the *Merchant Shipping Act, 1854*.

**2529.** The rules concerning loss by average contribution are contained in the sixth section of this chapter.

**2530.** When in the course of the voyage the ship becomes disabled from completing it, the master is bound to procure another vessel for conveying the cargo to the place of destination, if it can be done with advantage to the parties interested; and in such case the liability of the insurer continues after the cargo is transhipped for that purpose.

**2531.** The insurer is also liable in the case provided in the last preceding article for damages, expenses of discharging, storage, reshipment, supplies, freight, and all other costs not exceeding the amount insured.

2532. If in the case provided in article 2530, the master be unable to procure another vessel within a reasonable time for conveying the cargo to its destination, the insured may make an abandonment of it.

2533. In insurance by an open policy the value of the ship is held to be that which she bears at the port where the voyage begins, including whatever adds to her permanent value or is necessary to prepare her for the voyage, and also the costs of insurance.

2534. The value of the goods insured by open policy is established by the invoice, or if that can not be done is estimated according to their market price at the time of landing; all charges and expenses incurred up to that time, together with the premium of insurance, are included.

2535. The amount for which the insurer is liable on a partial loss is ascertained by comparing the gross produce of the damaged sales with the gross produce of the sound sales, and applying the percentage of difference to the value of the goods as specified in the policy, or established in the manner provided by the last preceding article.

2536. The insured is bound when he makes claim for any loss, to declare, if thereunto required, all other insurances effected by him on the thing insured and also the loans taken by him on bottomry and respondentia. He can not claim payment for the loss until such declaration is made, when so required, and if the declaration be false and fraudulent he loses his right to recover.

2537. The insured is bound to do in good faith all in his power between the time of loss and the abandonment to save the effects insured. His acts and those of his agents done for that purpose are for the benefit of the insurer and at his expense and risk.

#### *Section V. Of Abandonment.*

2538. The insured may make an abandonment to the insurer of the thing insured in all cases of its constructive loss and may thereupon recover as for a total loss. Without abandonment he is entitled in such cases to recover as for a partial loss only.

2539. An abandonment can not be partial or conditional. It extends, however, only to the property actually at risk at the time of the loss.

2540. If different things or classes of things be insured by the same policy and separately valued, the right to abandon may exist in respect to a part separately valued, as well as in respect to all.

2541. The abandonment must be made within a reasonable time after the insured has received intelligence of the loss. If from the uncertainty of the intelligence or the nature of the loss further inquiry and investigation be required to enable the insured to determine whether he will abandon or not, reasonable delay for that purpose is allowed according to circumstances.

2542. If the insured fail to abandon within a reasonable time, as provided in the last preceding article, he is held to have waived the right to do so and can only recover as for a partial loss.

2543. The abandonment is made by a notice given by the insured to the insurer of the loss, and that he abandons to the latter all his interest in the thing insured.

2544. The notice of abandonment must be explicit and must contain a statement of the grounds of abandonment. These grounds must exist and be sufficient at the time of the notice.

2545. Abandonment on the ground of the ship being disabled by stranding can not be made if she can be raised and put in a condition to continue her voyage to the place of destination. In such case the insured has his recourse against the insurer for the expense and loss occasioned by the stranding.

2546. If a ship has not been heard of within a reasonable time after sailing, or after the reception of the last intelligence of her, she is presumed to have foundered at sea, and the insured may make an abandonment and recover for a constructive total loss. The time necessary for raising such presumption is determined by the Court according to the circumstances of the case.

2547. Abandonment made and accepted is equivalent to transfer, and the thing abandoned with the rights pertaining to it becomes from the time of abandonment the property of the insurer. The acceptance may be either express or implied.



**2548.** On an accepted abandonment of the ship, the freight earned after the loss belongs to the insurer of the ship; that earned previously to the loss belongs to the ship-owner or to the insurer on freight to whom it is abandoned.

**2549.** Abandonment made upon sufficient ground and accepted, is binding on both parties. It can not be defeated by any subsequent event, or revoked otherwise than by mutual consent.

**2550.** If the insurer refuse to accept a valid abandonment he is liable as for an absolute total loss, deducting from the amount any proceeds of the thing abandoned which have been applied to the benefit of the insured.

*Section VI. Of Loss by Average Contributions.*

**2551.** In the absence of special agreement between the parties, average contributions are regulated by the following articles of this section, and, when these do not apply, by the usage of trade. The insurer is bound to reimburse the insured the amount of his contribution not exceeding the sum insured.

**2552.** Contribution by the ship and freight, and by the goods, whether saved or lost, rateably and according to their respective values, is made for damages voluntarily sustained and extraordinary expenses incurred, for the common safety of the ship and cargo. These are called general or gross average losses, and are as follows: 1. Money or other things given as a compensation to pirates to ransom the ship and cargo, or as salvage to recaptors; 2. Loss by jettison; 3. Masts, cables, anchors, or other furniture of the ship, cut away, destroyed, or abandoned; 4. Damages caused by jettison to the goods which remain in the ship or to the ship itself; 5. The wages and maintenance of seamen, during the detention of the ship in the course of her voyage, by a sovereign power, and during the necessary repairs of injuries of a nature to give rise to average contribution; 6. The expense of unlading to lighten the ship and enable her to enter a port of refuge or river, when she is compelled to do so by storm or by pursuit of an enemy; 7. Loss and expenses arising from the voluntary stranding of the ship for the purpose of escaping total loss or capture. And in general all damages voluntarily suffered and extraordinary expenses incurred for the common safety of the ship and cargo, from the time of loading and departure of the ship to the time of her arrival and discharge at the port of destination.

**2553.** Jettison gives rise to contribution only when it is made in imminent peril and is necessary for the preservation of the ship and cargo. It may be of the cargo, or of the provisions, tackle, or furniture of the ship.

**2554.** Jettison must be first made of things the least necessary, the most weighty, and of the least value.

**2555.** The ship's warlike stores and provisions, and the clothes of the crew, do not contribute, but the value of those lost by jettison is paid by contribution upon other effects generally. The baggage of passengers does not contribute. If lost it is paid by contribution in which it shares.

**2556.** Goods for which there is no bill of lading or acknowledgment by the master, or which are put on board contrary to the charter-party, are not paid for by contribution if lost by jettison. They contribute if saved.

**2557.** Goods carried on deck, which are lost or damaged by jettison, are not paid for by contribution, unless they were so carried in conformity with an established usage and course of trade. They contribute if saved.

**2558.** In cases of average contribution the ship and freight are estimated at their value at the port of discharge. The goods lost as well as those saved are estimated in like manner, deducting freight, duties, and other charges.

**2559.** Notwithstanding the rule of valuation contained in the last preceding article, the amount which the insurer is liable to reimburse to the insured for his contribution is regulated by the value which the ship or goods bear according to articles 2533 and 2534, or by the sum specified in the valued policy and not by their contribution value.

**2560.** No contribution is made for particular average losses. They are borne by the owner of the thing which has suffered the damage or occasioned the expense; saving his recourse against the insurer as declared in article 2527.

**2561.** If the ship be not saved by the jettison, no contribution takes place, and the goods saved are not held to contribute for those lost or damaged thereby.

**2562.** If the ship be saved by the jettison and continue her voyage, but be afterwards lost, the goods saved are subject to contribution at their actual value, deducting the costs of salvage.

**2563.** The goods jettisoned do not in any case contribute to the payment of losses happening afterwards to the goods saved. The cargo does not contribute to the payment of the ship when lost or rendered unfit for navigation.

**2564.** In case of the loss of goods put into lighters to enable the ship to enter into a port or river, the ship and her whole cargo are subject to contribution; but if the ship be lost with the goods remaining on board, the goods in the lighters are not subject to contribution, although they arrive safely in part.

**2565.** It is the duty of the master on his arrival at the first port to make his declaration and protests in the customary form, and also, together with some of his crew, to make oath that the loss or expense sustained was for the safety of the ship and crew. The neglect to do so does not, however, affect the rights of the parties interested.

**2566.** The owners and master have a privilege and right of retention upon the goods on board the ship or their price for the amount of contribution for which these are liable.

**2567.** If after the contribution the goods jettisoned be recovered by the owner he is bound to repay to the master and other interested parties, the amount of the contribution received by him, deducting therefrom the amount of damage suffered by the goods and the costs of salvage.

## Insolvency.

### Code of Civil Procedure.<sup>1)</sup>

**853.** The following persons may make a judicial abandonment of their property for the benefit of their creditors: 1. A debtor who has been arrested upon *capias ad respondendum*, as provided in the chapter thereon; 2. A trader who has ceased his payments and upon whom a demand of abandonment has been made by any creditor whose claim is unsecured for a sum of two hundred dollars or upwards.

**854.** The demand required by paragraph 2 of the preceding article must be signed by the creditor or by his agent specially authorized in that behalf; and in the case of a corporation, by its president, general manager, or local agent for the

<sup>1)</sup> The statutory provisions relating to the winding-up of companies are contained in the Dominion Winding-up Act and in the Statutes of Quebec reprinted under the head of Companies, *supra*. The Civil Code also contains certain provisions relating to the rights of creditors, the principal of which are the following:

**1032.** Creditors may in their own name impeach the acts of their debtors in fraud of their rights, according to the rules provided in this section.

**1033.** No contract can not be avoided unless it is made by the debtor with intent to defraud, and will have the effect of injuring the creditor.

**1034.** A gratuitous contract is deemed to be made with intent to defraud, if the debtor be insolvent at the time of making it.

**1035.** An onerous contract made by an insolvent debtor with a person who knows him to be insolvent is deemed to be made with intent to defraud.

**1036.** Every payment by an insolvent debtor to a creditor knowing his insolvency, is deemed to be made with intent to defraud, and the creditor may be compelled to restore the amount or thing received or the value thereof, for the benefit of the creditors according to their respective rights.

**1038.** An onerous contract made with intent to defraud on the part of the debtor, but in good faith on the part of the person with whom he contracts is not voidable; saving the special provisions applicable in cases of insolvency of traders.

**1039.** No contract or payment can be avoided, by reason of anything contained in this section, at the suit of a subsequent creditor, unless he is subrogated in the rights of an anterior creditor.

**1040.** No contract or payment can be avoided by reason of anything contained in this section at the suit of any individual creditor, unless such suit is brought within one year from the time of his obtaining a knowledge thereof. If the suit be by assignees or representatives of the creditors collectively, it must be brought within a year from the time of their appointment.



district where the abandonment should be made, or by the specially authorized agent of such corporation. Any demand made by virtue of a special power of attorney must mention the fact.

**855.** The service of the demand on a person in the Province is subject to the same rules as ordinary summons.

**856.** The demand must be filed at the office of the Court, together with a claim under oath accompanied by vouchers, and the special power of attorney, if any, under which the demand has been made.

**857.** The demand may be contested by petition, which must be filed within two days after the service of the demand, and be served upon the demanding party as soon as possible. The contesting party may, within the same delay, file a motion to stay the proceedings until a power of attorney or security for costs is furnished by the party who made the demand, whenever the latter is not resident in the Province.

**858.** The abandonment consists of the filing of the declaration, and of the deposit of the statement, as hereinafter provided.

**859.** If the debtor does not contest the demand, he must, within two days after it has been served upon him, file at the place where by law the abandonment must be made, a declaration that he consents to abandon all his property to his creditors; and he must deposit his statement within four days from such service. If there is a contestation or a motion for a power of attorney or for security for costs, the delays are computed from the judgment thereon. The judge may extend the delays for filing the declaration or for depositing the statement.

**860.** If one or more of the members of a partnership is dead, or absent from the Province, the declaration and statement may be signed by the surviving or by the resident partners; but the abandonment does not then affect the private property of the dead or absent partner.

**861.** The statement must be sworn to by the debtor and show: 1. All the moveable and immoveable property liable to seizure in his possession; 2. The names and addresses of his creditors, the amount of their respective claims, and the nature of each claim, whether privileged, hypothecary, or otherwise. Unless a declaration has been made by the debtor in conformity with article 859, the statement must be accompanied with a declaration by the debtor that he consents to abandon all his property to his creditors.

**862.** The declaration and the statement are filed in the office of the Superior Court for the district where the debtor has his principal place of business, and in default of such place, where he is domiciled.

**863.** The abandonment deprives the debtor of the enjoyment of such of his property as is liable to seizure, as well as of the possession of his books of account and titles to debt, and gives his creditors the right to have such property sold and realized for the payment of their respective claims.

**864.** Immediately after the filing of the declaration that the debtor consents to abandon, whether it is accompanied by the statement or not, the prothonotary appoints a provisional guardian whom he, as far as possible, selects from the most interested creditors, who, either personally or by a person whom he delegates for that purpose, takes immediate possession of all the property liable to seizure and of the books of account and titles of debt of the debtor. The guardian may summarily dispose of any perishable goods and may take conservatory measures, under the direction of the judge, or, in the absence of the latter, of the prothonotary.

**865.** Within five days after the filing of the statement the provisional guardian must give notice of the abandonment: 1. By inserting and advertisement to that effect in the *Quebec Official Gazette*. 2. By a registered letter, posted to the address of each of the creditors, setting forth the date of the filing of the statement, and the amount and the nature of each claim. In default of such notices being given by the provisional guardian within the prescribed delay, the debtor or any creditor may give them.

**866.** For the purpose of advising as to the appointment of a curator and inspectors, a meeting of the creditors is called before the judge, by a registered notice posted to the address of each of them, and also inserted in a newspaper published in the district, or in a neighbouring district if there be none in the district. Such meeting must be held between the fifth and the fifteenth day after the publication of the notice calling it.

867. The judge must appoint, as curator and inspectors, the persons chosen by the majority in number and in value of the creditors present or represented at the meeting who have filed sworn claims. If the majority in number does not agree with the majority in value, the Judge decides between them, as he thinks proper.

868. The Judge may also appoint a guardian and a curator in any of the following cases: 1. When a *capias* can not be executed by reason of the absence of the defendant, or because he cannot be found. 2. When the debtor is a trader who has ceased his payments, and has left the Province, or no longer resides therein; 3. When the demand has been served upon a trader of the age of seventy years or upwards or upon a woman who is a public trader, and has not been complied with.

869. Such appointment is made on the petition of the plaintiff or of a creditor whose claim is unsecured for a sum of two hundred dollars or upwards. The powers and obligations of the provisional guardian and of the curator so appointed are, in so far as may be, the same as in cases of abandonment. The Judge may prescribe the observance of such formalities and the giving of such public notices as he deems necessary.

870. The curator takes possession of all the property mentioned in the statement, as well as of the debtor's books of account and titles of debt, and administers the property until it is sold or realized in the manner hereinafter mentioned. He has, in like manner, a right to receive, collect, and recover any other property belonging to the debtor, which the latter has failed to include in his statement, except such as is by law exempt from seizure.

871. After the abandonment, any proceeding by way of seizure, attachment for rent or seizure in execution against the moveable property of the debtor is suspended; and the guardian or the curator has a right to take possession of the goods so seized, upon serving, by a bailiff, a notice of his appointment upon the seizing creditor, or upon his attorney, or upon the bailiff intrusted with the writ. The costs upon such seizure, incurred after the notice, or, in the absence of such notice, incurred by a creditor after he had knowledge of the abandonment, either personally, or by his attorney, or by the bailiff, and in all cases, the costs of seizure incurred eight days after the notice given by the curator, can not be collocated upon the property of the debtor, the proceeds of which are distributed in consequence of the abandonment. The judge may, however, permit the continuance of proceedings already commenced, upon such terms as are deemed proper.

872. The curator must make his appointment known by an advertisement in the *Quebec Official Gazette*, and by a registered notice posted to the address of each creditor. In such notice the curator calls upon the creditors to file their sworn claims with him within a delay of thirty days.

873. If subsequently to the abandonment, and before the curator has rendered his final account, the debtor acquires any additional property, he may be required, by a new demand, to abandon it also. Immediately upon the abandonment being made, the curator takes possession of such property, and proceeds to the sale and distribution of the moneys as in ordinary cases; but is bound to reimburse the expenses incurred by any creditor through whose diligence the property is rendered available. Such demand may be made by the curator, with the authorization of the inspectors, or by any creditor competent to demand an abandonment.

874. The curator appointed may be required to give security, the amount whereof is fixed by the Judge. The security may be given in favour of the creditors of the debtor generally without mentioning their names. The Judge may, whenever it becomes necessary, appoint a curator *ad hoc* to enforce any such bond against the parties liable.

875. The curator is subject to the summary jurisdiction of the Judge.

876. Any property not belonging to the debtor, which is in the curator's possession by virtue of the abandonment, may be recovered by the person thereto entitled, upon a petition to the judge.

877. The curator may, with the leave of the judge, upon the advice of the creditors or inspectors, exercise all the rights of action of the debtor and all the actions possessed by the mass of the creditors.

878. The curator may sell the moveable and immoveable property of the debtor in the manner indicated by the judge, upon the advice of the parties interested or of the inspectors.



879. Upon the application of the curator authorized by the inspectors or upon the application of an hypothecary creditor, after notice to the debtor, the Judge may authorize the curator to sell the immoveables of the latter in such manner and after such notices as the Judge may please to order, he may also authorize or command the curator to issue his warrant to the sheriff competent to act requiring the latter to seize and sell such immoveables. The sheriff executes such warrant without making any service upon the debtor, but by otherwise observing the same rules as in the case of an execution against immoveables; and all subsequent proceedings are had in the Superior Court. The moneys realized from the sale made by the sheriff remain in his hands to be paid by him to the privileged and hypothecary creditors in accordance with the report of distribution which shall be made by the prothonotary of the Superior Court in the usual way, and the surplus shall be remitted to the curator upon an order of the judge for its distribution among the chirography creditors by means of a dividend sheet prepared in accordance with the following article.

880. The moneys realized by the curator from the property of the debtor must be distributed by the curator among the creditors by means of dividend-sheets prepared after the expiration of the delays to file creditor's claims. Notice of their preparation must be given by an advertisement in the *Quebec Official Gazette*. A copy of the dividend-sheets, with a notice of the date at which they are payable, must also be posted by registered letter to the address of each of the creditors who have filed their claims or whose names appear in the statement. The dividend-sheets are payable fifteen days after the observance of these formalities.

881. The claims or dividends may be contested by any party interested or by the curator at the expense of the estate if he is so instructed by the inspectors. The contestation for such purpose is filed with the curator, who is bound to transmit it immediately to the prothonotary of the Superior Court for the district in which the proceedings upon the abandonment are then deposited, or for such other district as the parties interested in the contestation may agree upon; and the contestation is proceeded with and decided summarily by the Judge. The Judge may allow the payment, in whole or in part, of any claims or dividends which are not contested, upon being satisfied that a sufficient sum is retained to meet the contestation.

882. Any creditor, at any time after the filing of the statement, or the curator with the authorization of the inspectors, may summon the debtor to appear before the Judge or the prothonotary, and examine him on oath concerning the statement and the condition of his affairs.

883. Upon application by any creditor at any time after the filing of the statement, or by the curator with the authorization of the inspectors, the judge may order the production of any book or document relating to the matters mentioned in the preceding article, and the examination of the consort of the debtor and of any other persons whom he deems capable of furnishing information in regard to such matters.

884. The rules relating to the summoning and examination of witnesses and the taking of evidence govern cases provided for in the two preceding articles, in so far as they apply. Any person summoned who refuses to appear or to answer, or to produce any book or document, may be condemned by the Judge to imprisonment for a term not exceeding one year. If any dispute arises during the examination, the parties are sent before the Judge to have it decided.

885. The curator, authorized by the inspectors, or any creditor, may contest the statement by reason: 1. Of the fraudulent omission to mention property of the value of one hundred dollars; 2. Of fraudulent misrepresentations therein with respect to the number of the creditors, or the nature or amount of their claims; 3. Of secretion by the debtor, within the year immediately preceding the filing of the statement, or since, of any portion of his property, with intent to defraud his creditors.

886. The contestation of the statement must be made within four months from the day on which the advertisement of the curator's appointment appears in the *Quebec Official Gazette*.

887. The contesting party is also bound, within the same delay, to prove his allegations, by all legal means. The Judge may, however, prolong the delay

for making such proof, but not beyond two months. The Judge may, when satisfied that the delay is due to the fault of the debtor, allow, from time to time, a further delay of two months.

888. If the contesting party establishes any one of the offences mentioned in Article 885, the Judge may condemn the debtor to be imprisoned for a term not exceeding one year. The rules contained in articles 838, 839, 840, 841 and 842, apply, in so far as may be, to proceedings in execution of the condemnation.

889. If the statement is not contested within the required delay, or if the contestation is not proved within such delay, the judge may order the discharge of the debtor and the latter is exempt from arrest or imprisonment by reason of any cause of action which existed before the making of such statement, without prejudice to cases where he has been already arrested under a *capias*, or is imprisoned for any debt of the description mentioned in Articles 833 and 834; and in case of such imprisonment or arrest, he may obtain his liberation from the Judge, upon petition and sufficient proof.

890. Judgments and orders rendered in virtue of Articles 866, 867, 868, 871, 874, 877, 878, 879, 882, and 883 are not subject to review or to appeal.

891. The abandonment of his property discharges the debtor from his debts to the extent only of the amount which his creditors have been paid out of the proceeds of the sale of such property.

892. The curator must keep a register containing the names and description of the debtor, the date of the abandonment, the amount of the proceeds of the property, the amount of each claim, the amount paid to each creditor, the number of dividends, and the amount of his fees and disbursements. The register may be consulted by any creditor, during reasonable hours, at the curator's place of business. Within two months after the date when the last dividend-sheet is payable, the curator must deposit the register in the office of the Court to which it appertains. The curator must also, within the same delay, unless the judge otherwise orders, under penalty of all costs and damages, prepare a certificate of all his proceedings, and file it in the office of the Superior Court, with all papers and documents relating to his management, and the complete record thus returned forms part of the records of such court.

## X. Saskatchewan.

### Law in force.

The Province of Saskatchewan was formed from the North-West Territories in 1905. The law, both statutory and common, as it existed in the North-West Territories at the time of the establishment of the Province continues in force except as modified by Acts of the Imperial Parliament in force in the Province and Acts of the Dominion Parliament and of the Provincial Legislature<sup>1</sup>).

### Statutes.<sup>2</sup>)

#### Application of Law.

**4 & 5 Edw. 7, c. 42.** An Act to establish and provide for the Government of the Province of Saskatchewan (20th July, 1905).

**Laws, Courts, and officers continued. 16.** [This section is identical in all material respects with the corresponding section of the Alberta Act, 4 & 5 Edw., 7 c. 3. reprinted under Alberta, *supra*.]

<sup>1</sup>) Dominion Act, 4 & 5 Edw. 7, c. 42, § 16. — <sup>2</sup>) As in force 1st January, 1912.



## Statutes relating to Commercial Matters.

The law of Saskatchewan relating to partnership, companies, sale of goods, factors, and preferential assignments is in substance the same as that of the Province of Alberta. The statutes of Saskatchewan and Alberta have as a common basis the Ordinances of the North-West Territories as in force in 1905. But even in the local legislation of the two Provinces since that date there is a substantial similarity. A reference to the statutes of Alberta as reprinted above will give a general view of the statutory law of Saskatchewan.

## XI. Yukon Territory.

### Law in force.

The law relating to civil and criminal matters and the Ordinances in force in the North-West Territories on 13th June, 1898, in so far as applicable, and not amended or repealed by any Act of the Imperial or of the Dominion Parliament applicable to the Territory, or by any local Ordinance, are in force<sup>1</sup>).

### Statutes.<sup>2</sup>)

#### Application of Law.

**R. S. C. 1906, c. 63. An Act to provide for the Government of the Yukon Territory.**

**Existing laws continued. 19.** Subject to the provisions of this Act, the laws relating to civil and criminal matters and the ordinances in force in the North-West Territories on the thirteenth day of June, one thousand eight hundred and ninety-eight, shall be and remain in force in the Territory, in so far as the same are applicable thereto, and in so far as the same have not been or are not hereafter repealed, abolished, or altered by the Parliament of Canada, or by any ordinance of the Governor in Council or the Commissioner in Council made under the provisions of this Act.

**Application of Acts of Parliament. 20.** Every Act of the Parliament of Canada, except in so far as otherwise provided in any such Act, and except in so far as the same is, by its terms, applicable only to one or more of the Provinces of Canada, or is, for any reason, inapplicable to the Territory, shall, subject to the provisions of this Act, apply to and be in force in the Territory.

**Acts may be made to apply by proclamation. 21.** The Governor in Council may, by proclamation, from time to time, direct that any act of the Parliament of Canada, or any part or parts thereof, or any one or more of the sections of any such Act not then in force in the Territory, shall be in force in the Territory generally, or in any part or parts thereof mentioned in such proclamation.

#### Foreign Companies.

**Cons. Ord. 1902, c. 59. An Ordinance respecting Foreign Corporations.**

#### Short Title.

**Short title. 1.** This Ordinance may be cited as *The Foreign Companies Ordinance*.

<sup>1</sup>) R. S. C. 1906, c. 63, §§ 19—21, reprinted in full *infra*. — <sup>2</sup>) As in force 1st January, 1912.

Corporations to obtain license before doing business. Certain documents to be filed with Territorial Secretary. Power of attorney. Evidence of license. Annual statement to be furnished. Summary to be verified. Penalty for default. Commissioner may suspend or revoke license. 2. Any company, institution, or corporation incorporated otherwise than by or under the authority of an Ordinance of the Territory or an Act of the Parliament of Canada desiring to carry on any of its business within the Territory may (through the Territorial Secretary) petition the Commissioner for a license so to do and the Commissioner may thereupon authorise such company, institution, or corporation to use, exercise, or enjoy any powers, privileges, and rights set forth in the said license. 2. No such license shall be issued until such company, institution, or corporation has deposited in the office of the Territorial Secretary a true copy of the Act, charter, or other instrument incorporating the company, institution, or corporation verified in the manner which may be satisfactory to the Commissioner together with a duly executed power of attorney empowering some person therein named and residing in the Territory to act as its attorney and to sue and be sued, plead or be impleaded in any Court, and generally on behalf of such company, institution, or corporation and within the said Territory to accept service of process and to receive all notices and for the purposes aforesaid to do all acts and to execute all deeds and other instruments relating to the matters within the scope of the power of attorney; and such company, institution, or corporation may from time to time by a new or other power of attorney executed and deposited as aforesaid appoint another attorney within the Territory for the purposes aforesaid to replace the attorney formerly appointed; and notice of the granting of such licence shall be given forthwith by the Territorial Secretary in the *Official Gazette*. 3. The license or any exemplification thereof under the seal of the Territory shall be sufficient evidence in any proceeding in any Court of the Territory of the due licensing of the company, institution, or corporation as aforesaid. 4. A company, institution, or corporation licensed under this section shall on or before the thirty-first day of January in every year during the continuance of such license make a statement to the Territorial Secretary verified by affidavit containing as of the thirty first day of December preceding a summary of the following particulars: a) The corporate name of the company, institution, or corporation; b) The manner in which the company, institution, or corporation is incorporated; c) The place where the head office of the company, institution, or corporation is situated; d) The place or places where or from which the undertaking of the company, institution, or corporation is carried on; e) The name, residence, and post office address of the president, the secretary, and the treasurer of the company, institution, or corporation; f) The name, residence, and post office address of each of the directors of the company, institution, or corporation; g) The date upon which the last annual meeting of the company, institution, or corporation was held; h) The amount of the capital of the company, institution, or corporation and the number of shares into which it is divided; i) The number of shares subscribed for and allotted; j) The amount of stock (if any) issued free from call; if none is so issued, the fact to be stated; k) The amount issued subject to call; l) The number of calls made on each share; m) The total amount of calls received; n) The total amount of calls unpaid; o) The total amount of shares forfeited; p) The total amount of shares which have never been allotted or subscribed for; q) The total amount for which shareholders of the company, institution, or corporation are liable in respect of the unpaid stock held by them; r) In a concise form any further information respecting the affairs of the company, institution, or corporation as the directors consider expedient. 5. The summary in the next preceding subsection mentioned shall be verified by the affidavit of the president and secretary, and, if there is no president or he is unable to make the same, by the affidavit of the secretary and one of the directors, and, if there is no secretary or he is unable to make such affidavit, by the affidavit of the president and one of the directors and if there is neither a president or secretary or they are both unable to make such affidavit, by the affidavit of two of the directors and if the president or secretary does not make or join in the affidavit the reason therefor shall be stated in the substituted affidavit. 6. Any company, institution, or corporation making default in complying with the provisions of this section shall be liable to a penalty of \$50 for each and every day during which default continues; and every director, manager, secretary, agent, traveller, or salesman of such company, insti-



tution, or corporation who transacts within the Territory any business whatever for such company, institution, or corporation shall, for each day, upon which he so transacts such business, on summary conviction thereof before a justice of the peace incur a penalty of \$50, such penalties to belong to the general revenue fund of the Territory. 7. The Commissioner may by order (a notice of which shall be published by the Territorial Secretary in the *Yukon Official Gazette* or otherwise as may be prescribed in the said order) suspend or revoke and make null and void any license granted under this section to any company, institution, or corporation which refuses or fails to comply with any of the provisions of this section and (notwithstanding such suspension or revocation) the rights of creditors of the company, institution, or corporation shall remain as at the time of such suspension or revocation.

**Amount of paid up capital to appear on all documents.** 3. Every company, institution, or corporation licensed under this Ordinance shall have written or printed on its prospectuses, notices, advertisements, and other official publications and in all bills of parcels, invoices, and receipts of the company, institution, or corporation immediately after or under the name of such company, institution, or corporation the amount of its paid up capital and every such company, institution, or corporation which refuses or neglects to comply with this section shall be liable to a penalty not exceeding \$20 for each such offence; and every director, manager, or agent of any company, institution, or corporation who knowingly authorizes or permits such default shall on summary conviction thereof be liable to the like penalty, such penalties to belong to the general revenue fund of the Territory.

**Prosecution.** 4. The Commissioner may from time to time appoint a person with salary to prosecute any company, institution, or corporation making default in complying with the provisions of this Ordinance.

**Fee to be paid.** 5. No license shall be issued to any company unless such company has paid to the Territorial Treasurer the proper fee according to the tariff of fees in the schedule to this Ordinance provided.

**Business not to be carried on.** 6. No company requiring a license under this Ordinance shall carry on any part of its business in the Yukon Territory until it has been duly licensed under this Ordinance.

**Penalties.** 7. Any such company carrying on business without being duly licensed, and any company, firm, broker, or other persons carrying on business as a representative or on behalf of such company shall be liable on summary conviction to a penalty of \$50 for every day on which such business is carried on in contravention of this section, and proof of compliance with the provisions of this section shall at all times be upon the accused. 2. The taking orders for or the buying or selling goods, wares, and merchandise by travellers or by correspondence if the company has no resident agent or representative, and no office or place of business in the Yukon Territory, the onus of proving which shall in any prosecution under this section rest on the accused, shall not be deemed to be carrying on business within the meaning of this Ordinance.

**Incapacity to sue.** 8. 1. No such company shall while unlicensed be capable of maintaining any action or other proceeding in any Court in respect of any contract made in whole or in part in the Territory, in the course of or in connection with business carried on without a license contrary to the provisions of section 6 hereof. 2. In any action or proceeding the burden of showing that it is licensed shall be upon the company.

### Other Commercial Ordinances.

1. Partnerships must be registered pursuant to Cons. Ord. 1902, c. 41, which is identical in all material respects with N. W. T. Cons. Ord. 1898, c. 45.

2. Sales of goods are governed by Cons. Ord. 1902, c. 35, which is a re enactment of the Imperial Act. There is no doctrine of market overt. Sales over \$50 must be in writing.

3. Factors are regulated by Cons. Ord. 1902, c. 36, which is a copy of the Imperial Factors Act.

4. Preferential assignments are governed by Cons. Ord. 1902, c. 38. Conveyances and transfers made by an insolvent or by one who knows that he is on the eve of insolvency with intent to defeat or delay his creditors, or to give to one or more of them a preference over the others are void, whether such conveyance was made under pressure or not. But assignments made for the purpose of securing a rateable distribution of property are valid, as are also all bona fide sales or payments made in the ordinary course of business.

5. Companies are regulated by Cons. Ord. 1902, c. 57, which is in substance the N. W. T. Ordinance as set forth in N. W. T. Cons. Ord. 1898, c. 61, and by Cons. Ord. 1902, c. 58, relating to change of name. The Ordinance relating to foreign companies is reprinted *supra*.



# Newfoundland.

## Introduction.<sup>1)</sup>

The boundaries of the Colony of Newfoundland are defined as containing the Island of Newfoundland and the islands adjacent thereto, and all the coast of Labrador from the entrance of Hudson's Straits to a line drawn due north and south from Anse Sablon on the said coast to the fifty-second degree of north latitude, and all islands adjacent to that part of the coast of Labrador<sup>2)</sup>.

## History and government.<sup>3)</sup>

Newfoundland is the oldest of the British colonies. It is no longer open to doubt that Icelandic navigators reached the coast of North America during the period from the ninth to the eleventh century, and it is probable that they landed on the coasts of Labrador and Newfoundland<sup>4)</sup>. In 1496 Henry VII. granted letters patent to John Cabot authorising him to make a voyage of discovery. On the 24th of the following June Cabot claims to have first sighted the New World. The tradition is that the land thus sighted was Cape Bonavista, Newfoundland. Other voyages under English auspices followed. In 1501 Gaspar Cortereal, the Portuguese navigator, came to Newfoundland, and in the years immediately following a number of fishing companies were formed in Portugal for the purpose of founding establishments in Terra Nova<sup>5)</sup>. The record of French fishing voyages begins in 1504, that of the Spanish in 1511<sup>6)</sup>. During the sixteenth century the number of French and Spanish vessels in the Newfoundland fishing trade greatly exceeded that of the English. As early as 1522 some settlements seem to have been made in Newfoundland.

The attempts at English colonization begin in 1578—1583 with the ill-starred voyages of the brave but visionary Sir Humphrey Gilbert. On his last voyage Gilbert formally took possession of Newfoundland in the name of the English sovereign<sup>7)</sup>. Between 1578 and 1633 England granted five different charters to colonizing and trading companies to operate in Newfoundland. One of the most interesting of these colonizing ventures was the "Sea Forest Plantation" of the Guy Company. Guy actually promulgated some laws (11th August 1611). In 1615 the first attempt to establish a court of justice was made when Sir Richard Whitbourne formally opened a vice-admiralty court, an account of which he has preserved for us in his *Discourse of Newfoundland*<sup>8)</sup>. But the whole administration of justice was a farce, and serious disorders continued<sup>9)</sup>. In 1629 Charles I. issued a proclamation prohibiting disorderly trading with the Indians, and in 1633 the Star Chamber established a number of regulations in reference to Newfoundland, including the provision that the first skipper arriving from England was to be judge and admiral for the fishing season. In 1670 additional rules were issued by the Star Chamber. It is needless to say that the "fishing admirals" administered justice without regard to forms of procedure, and with little regard to the rules of law<sup>10)</sup>.

<sup>1)</sup> The writer desires to express his indebtedness to the Rt. Hon. Sir Robert Watson, Colonial Secretary of Newfoundland, for furnishing him with copies of the enactments of the Colony and for other valuable information and to the Honorable D. M. Browning, Registrar of the Supreme Court, for the courtesy of supplying him with the advance sheets of the reports of cases for 1904—1910. — <sup>2)</sup> Letters patent of 28th March, 1876, Stat. R. & O., Rev. 1904. Vol. 9. "Newfoundland," p. 1. — <sup>3)</sup> In addition to the works cited in the notes to this section, see Hatton and Harvey, *Newfoundland*; Pedley, *History of Newfoundland*. — <sup>4)</sup> Newfoundland may be the "Markland" of the Sagas. — See Storm, *Studies on the Vineland voyages*, (in *Memoires de la Société Royale des Antiquaires du Nord*, 1888), cited in Prowse, *History of Newfoundland*, p. 3. — <sup>5)</sup> Patterson, *The Portuguese on the North East Coast of America*, (in *Transactions of the Royal Society of Canada*, Vol. 8, Sec. II. pp. 135—147). — <sup>6)</sup> Prowse, l. c. pp. 4—50. — <sup>7)</sup> In 1583 appeared Peckham's *A true report of the late discoveries and possession taken in the right of the Crown ... of the Newfoundland Lands*, the first published book on Newfoundland. — <sup>8)</sup> *A discourse and discovery of Newfoundland*. London, 1620. — <sup>9)</sup> Prowse, l. c. pp. 114.—118. — <sup>10)</sup> See an interesting account of a trial in Prowse, l. c. pp. 173, 174.

In 1698 was passed the act of Parliament entitled "An Act to encourage the trade to Newfoundland."<sup>1</sup>) This act authorised the "fishing admiral" to hear and determine legal controversies relating to the fishing industry, and to preserve the peace, but apparently did not apply to the merchants and settlers not engaged in fishing. An appeal lay to the officers of the Royal Navy. The latter gradually extended their appellate jurisdiction, and assumed original jurisdiction in many cases not within their powers. Abuses continued, and in 1711 the commanders of the merchant ships, merchants, and chief inhabitants assembled and adopted a short code of laws, consisting of fifteen regulations, and similar assemblies appear to have been held in the following years<sup>2</sup>).

By the Treaty of Utrecht (1713) England's claims to Newfoundland were recognized. In 1728 Captain Henry Osborn, of H. M. S. "Squirrel," was appointed governor of Newfoundland<sup>3</sup>). Osborn established courts and imposed taxes. His successors were also invested with and exercised large powers of administration, but the constitutionality of a number of the acts of the early governors is extremely doubtful<sup>4</sup>).

Comprehensive regulations relating to the fishing trade of Newfoundland are contained in the act of Parliament of 1775<sup>5</sup>). Provision is made, *inter alia*, that the wages of fishermen and seamen shall be a first charge on the fish and oil, that not more than one-half of the wages shall be paid in advance, and that disputes regarding wages shall be determined by the court of session or court of vice-admiralty in Newfoundland.

A court of vice-admiralty was established in 1765, which in spite of the provisions of the act of Parliament of 1786<sup>6</sup>), continued to exercise a jurisdiction in purely civil cases. In 1789 Admiral Milbanke, upon a doubtful construction of the terms of his commission, established a court of common pleas. In 1791 an act establishing a civil court was passed<sup>7</sup>). In 1824 Parliament passed "an Act for the better administration of justice in Newfoundland<sup>8</sup>)" and in conformity therewith a Charter of Justice was granted in the following year<sup>9</sup>). In 1832 Newfoundland received representative institutions, and the first session of the assembly was held in the following year. Full responsible government was established in 1855<sup>10</sup>). Newfoundland has not availed herself of her privilege to become a member of the Dominion of Canada<sup>11</sup>).

The present constitution of Newfoundland is contained in letters patent of 28th March 1876, as amended by letters patent of 7th July 1905<sup>12</sup>). The executive authority is vested in the Governor, assisted by an Executive Council. The legislative power is vested in a Legislative Council, consisting of persons appointed by the Crown, and a General Assembly elected by universal manhood suffrage, but the members of which must possess certain property qualifications.

The claims of the Basques and Bretons to the discovery of Labrador are not well sustained, and the discovery of South Labrador must for the present be ascribed to John Cabot (1498)<sup>13</sup>). Labrador was attached to Newfoundland in 1763. Courts were authorised to be established in 1811<sup>14</sup>). The present court for Labrador was authorised by the Act of Parliament of 1824<sup>15</sup>). Labrador is administered by the Collector of Customs of Newfoundland. This official is a justice of the peace, and at present no other courts are in operation.

### Law in force.

Newfoundland having been acquired by England by occupation and settlement, the law of England became from the outset the law of the Colony, except, possibly, in

<sup>1</sup>) 10 & 11 Wm. 3, c. 25. — <sup>2</sup>) The regulations adopted by this self-constituted parliament are set forth in Prowse, l. c. pp. 271, 272. See also Reeves, *History of the government of the Island of Newfoundland*, pp. 52, 53. — <sup>3</sup>) The Home Government, instead of appointing a person skilled in the law, as recommended, appointed a navy officer, and sent out copies of the Acts of Parliament and eleven copies of Shaw's *Practical Justice of the Peace*. — Reeves, l. c. pp. 73, 74. — <sup>4</sup>) Reeves, l. c., *passim*; Prowse, l. c. pp. 286 et seq. — <sup>5</sup>) 15 Geo. 3, c. 31. — <sup>6</sup>) 26 Geo. 3, c. 26. — <sup>7</sup>) 31 Geo. 3, c. 29, continued by 32 Geo. 3, c. 46. See also 49 Geo. 3, c. 27. — <sup>8</sup>) 5 Geo. 4, c. 67. — <sup>9</sup>) The text of the Charter of Justice may be found in Stat. R. & O. Rev. 1904, Vol. 9, "Newfoundland," pp. 5 et seq. — <sup>10</sup>) 2 & 3 Wm. 4, c. 78. See also 5 & 6 Vic. c. 120. — <sup>11</sup>) *British North America Act, 1867*, (30 & 31 Vic. c. 3) § 146. — <sup>12</sup>) Stat. R. & O. Rev. 1904, Vol. 9, "Newfoundland," pp. 1—4; Stat. R. & O. 1905, p. 145. — <sup>13</sup>) For an account of the early discoveries and settlements, see Prowse, l. c., pp. 587—618. — <sup>14</sup>) 51 Geo. 3, c. 45. — <sup>15</sup>) 5 Geo. 4, c. 67.



the small portion of the island settled by the French<sup>1</sup>). The law of England, both common and statute law, in force on 1st January 1833, when the legislature of Newfoundland began its sessions, is in force, except: first, in so far as its provisions are not applicable to local conditions; and, secondly, in so far as it has been modified by Imperial legislation expressly or impliedly extended to Newfoundland and by enactments of the local legislature.

The English law relating to the making, operation, transfer, and discharge of contracts is in force<sup>2</sup>). The promise made after full age to pay a debt contracted during infancy, or the ratification after full age of a promise or simple contract made during infancy must be in writing<sup>3</sup>). Contracts of guaranty must be in writing and signed by the party to be charged therewith, or his agent in that behalf, but the writing need not set forth the consideration for the promise<sup>4</sup>).

Aliens may acquire, hold and dispose of real and personal property in the same manner as natural born British subjects<sup>5</sup>). Married women may acquire, hold and dispose by will or otherwise of any real or personal property as separate property without the intervention of a trustee. They are capable of entering into and rendering themselves liable in respect of and to the extent of their separate property in the same manner as a feme sole, and may sue and be sued without joinder of their husbands. A contract entered into by a married woman otherwise than as an agent is deemed to be a contract entered into with respect to and binding her separate property, whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract, and binds all separate property which she may at that time or thereafter be possessed of or entitled to, and is also enforceable by process of law against all property which she may thereafter, while discover, be possessed of or entitled to, except such property as she is restrained from anticipating. Shares, stock, debentures, or other interest in any company or society standing in the name of a married woman are prima facie deemed to be her property in respect of which she is deemed to be entitled to receive dividends, interest and profits without the concurrence of her husband, and in regard to which her separate estate alone is liable for calls or otherwise, and which she may dispose of without the concurrence of her husband<sup>6</sup>).

Mortgages on personal property require registration<sup>7</sup>). The legal rate of interest is six per centum per annum and this rate is also the maximum recoverable against any insolvent estate<sup>8</sup>).

### Courts and procedure.

The Supreme Court is composed of a Chief Justice and two other judges<sup>9</sup>), and proceedings are held, according to the nature of the case before a single judge, before two judges, or before the whole court<sup>10</sup>). The court has all civil and criminal jurisdiction conferred by the Imperial Act of 1824<sup>11</sup>), by the Charter of Justice of 1825<sup>12</sup>), and by local acts, and is a court of admiralty in pursuance of the Colonial Courts of Admiralty Act, 1890<sup>13</sup>), and an insolvency court<sup>14</sup>). Law and equity are administered concurrently. The procedure is regulated by local acts and by the rules of the Supreme Court. In the absence of any local provision the practice and procedure of the High Court of Justice in England governs<sup>15</sup>).

An appeal from the Supreme Court lies to the Privy Council, where the judgment is for a sum above, or involving directly or indirectly, claim to property or civil right of the value of £500. A pro forma judgment is sufficient. Such appeal must be brought within fourteen days. The nature and amount of the security to be furnished by the appellant is regulated by the Supreme Court, but may not exceed £500, and must be furnished within three months, execution being carried out or suspended according as the respondent or appellant furnish security<sup>16</sup>).

There are two District Courts, one at St. John's, and one at Harbor Grace<sup>17</sup>). These courts have power to hear and determine summarily all civil causes to the

<sup>1</sup>) Journal, Society of Comparative Legislation, N. S. Vol. II, p. 284. Cp. *Cooper v. Stuart*, (1889), L. R. 14 A. C. 286. France abandoned her territorial claims in 1713. — <sup>2</sup>) The Statute of Frauds (29 Car. 2, c. 3) is in force. — Cp. *Martin v. Newfoundland Railroad Co.*, (1884), 5 Morr. 4; *Gosse v. Hutchings* (1908). — <sup>3</sup>) Cons. St. 1892, c. 85, § 9. — <sup>4</sup>) Cons. St. 1892, c. 85, § 10. — <sup>5</sup>) 63 Vic. 2d Sess. c. 7, § 1. — <sup>6</sup>) Cons. St. 1892, c. 81, as amended by 59 Vic. c. 17. See *Rankin v. Walsh*, (1883), 4 Morr. 497. — <sup>7</sup>) 7 Edw. 7, c. 19. — <sup>8</sup>) Cons. St. 1892, c. 92, §§ 1, 2. — <sup>9</sup>) 4 Edw. 7, c. 3, § 5. — <sup>10</sup>) Ibid. §§ 8—10. — <sup>11</sup>) 5 Geo. 4, c. 67. — <sup>12</sup>) Stat. R. & O. Rev. 1904, Vol. 9, "Newfoundland," p. 5. — <sup>13</sup>) 53 & 54 Vic. c. 27. — <sup>14</sup>) 4 Edw. 7, c. 3, § 4. — <sup>15</sup>) Ibid. §§ 272, 273. — <sup>16</sup>) Order in Council, 13th October 1910. — <sup>17</sup>) Cons. St. 1892, c. 52, §§ 1, 2.

amount of \$ 50, except where the title to land is concerned, and except actions for libel or slander, replevin, malicious prosecution, and actions against a public officer in respect of his official acts, except by consent of the defendant<sup>1</sup>). The District Courts also have jurisdiction in actions for the wrongful detention of chattels where the value thereof does not exceed \$ 200<sup>2</sup>). Causes of action may not be divided in order to give the court jurisdiction, but a plaintiff may abandon the excess, and recover up to the amount of \$ 50<sup>3</sup>). Counterclaims and other defences are admissible, but where the amount thereof exceeds \$ 50 no relief exceeding that amount can be granted<sup>4</sup>). Cases where the amount involved is \$ 20 or more may be removed to the Supreme Court by leave of a judge of the latter court<sup>5</sup>). An appeal lies to the Supreme Court where the amount involved is \$ 20 or more<sup>6</sup>).

The Courts of Session have civil jurisdiction for the recovery of debts or damages to the amount of \$ 25, except cases involving the title to land, and except actions for libel or slander, replevin, malicious prosecution, and actions against public officers in respect of their official acts. These courts also have jurisdiction in cases involving the wages of fishery servants, the supply of bait, etc.<sup>7</sup>)

Stipendiary magistrates may exercise out of session the jurisdiction of Courts of Session<sup>8</sup>). In places where there is no resident stipendiary magistrate the jurisdiction of such magistrate may be exercised by a justice of the peace<sup>9</sup>). Stipendiary magistrates on that part of the coast of Newfoundland extending from Cape Ray via Cape Norman to Cape John have the jurisdiction of a District Court<sup>10</sup>). An appeal lies from a judgment or order of a stipendiary magistrate to the Supreme Court, where the amount exceeds \$ 40<sup>11</sup>).

A special Court of Labrador is provided for<sup>12</sup>), but is not in operation, and justice is administered by the Collector of Customs (who is a justice of the peace), who visits the Labrador coast every summer<sup>13</sup>).

Actions upon any bond or other specialty must be brought within twenty years. Actions upon any award where the submission is not by specialty, for money levied on any fieri facias, actions of trespass, detinue, trover, and replevin for taking away of goods or chattels, actions of account and upon the case, and all actions of account or for not accounting, and suits for such accounts as concern the trade between merchant and merchant, their factors and servants, must be brought within six years after the cause of action arose<sup>14</sup>).

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**Consolidated** statutes of Newfoundland (second series). 1892. St. John's. 1896.

**Acts** of the General Assembly. Annual. St. John's.

### Reports of Cases.<sup>15</sup>)

Name of report.	No. of vols.	Period.	Method of citation.
Tucker's Select Cases . . . . .	1	1817—28	Tucker
Morris's Reports . . . . .	5	1817—28, 1854—96	Morr.
Morris and Browning's Reports . . . . .	1	1897—1903	M. & B.
Browning's Reports . . . . .	1	1904—1910	Brown.

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**Anger, W. H.:** Digest of the mercantile laws of Canada and Newfoundland. Toronto. 1910.

<sup>1</sup>) Ibid. § 3. — <sup>2</sup>) Ibid. § 16. — <sup>3</sup>) Ibid. § 8. — <sup>4</sup>) Ibid. § 17. — <sup>5</sup>) Ibid. § 11. — <sup>6</sup>) Ibid. § 12. — <sup>7</sup>) Cons. St. 1892, c. 53, § 3. — <sup>8</sup>) Ibid. § 5. — <sup>9</sup>) Ibid. § 15. — <sup>10</sup>) Ibid. § 22. — <sup>11</sup>) Ibid. § 23. — <sup>12</sup>) The Court of Labrador is a court of record presided over by one judge, having a limited criminal jurisdiction and a civil jurisdiction in suits where the debt, damage, or thing demanded does not exceed \$ 500 in value. An appeal lies to the Supreme Court, where the value of the subject matter exceeds \$ 20, or relates to title to land, or to a fishery, or where the future right in such land or fishery may be bound. — Cons. St. 1892, c. 51. — <sup>13</sup>) *Colonial Office List*. — <sup>14</sup>) Cons. St. 1892, c. 85, §§ 1, 12. — <sup>15</sup>) The judgments from 1829 to 1853 have



Statutes.<sup>1)</sup>

## Partnership.

## General Partnerships.

## Cons. St. 1892, c. 97. Of the Law of Partnership.

*Summary.*

**Short title.** *The Partnership Act, 1892.* The Act is identical with the Imperial Partnership Act, 1890 (53 & 54 Vic. c. 39), except as follows:

1. The numbering of §§ 1—21 corresponds with that of the Imperial Act; the numbering of §§ 22—46 is always one less than that of the corresponding section of the Imperial Act; § 46 corresponds to § 50 of the Imperial Act.

2. The following sections of the Imperial Act are not contained in the Newfoundland Act: § 1 (2) (c); § 4 (2); § 22; § 23 (4, 5); § 47; § 48; § 49.

3. § 1 (2) (a) of the Newfoundland Act reads as follows: "Registered as a company under the *Companies Incorporation Act, 1873*, or any other Act of the Legislature for the time being in force and relating to the registration of joint stock companies, or;" in §§ 1, 4, 19, 20, 32 (2), 44, 45, and 46 "chapter" is substituted for "Act;" in §§ 23 (3) and 41 (1) "six per cent.," is substituted for "five per cent.;" in § 3 "declared insolvent, entering into an arrangement to pay his creditors less than one hundred cents in the dollar" is substituted for "adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound;" in § 9 "and in Scotland severally also" and "in England or Ireland" are omitted; in § 14 "executor's or administrator's" is substituted for "executors or administrators;" in § 20 (2) "or in Scotland the title to and interest in any heritable estate" is omitted; in § 20 (3) "or in Scotland of any heritable estate" is omitted, and "belong to them" is substituted for "belongs to them;" in § 22 (1) "after the commencement of this Act" is omitted; in § 22 (2) "the Supreme Court or a Judge thereof" is substituted for "the High Court, or a judge thereof, or the Chancery Court of the county palatine of Lancaster, or a county court;" in § 23 (3) "he agreed" is substituted for "he has agreed;"<sup>2)</sup> in § 23 (9) "or at the principal place" is substituted for "or the principal place;" in § 32 (1) "insolvency" is substituted for "bankruptcy;" in § 34 (a) "or in Scotland by cognition" is omitted; § 35 (2) reads as follows: "an advertisement in the *Royal Gazette* and one other newspaper published in this Colony, shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised;" in § 35 (3) and in § 37 "insolvent" is substituted for "bankrupt" and "insolvency" for "bankruptcy;" in § 38 "property of the partnerships" is substituted for "property of the partnership;"<sup>2)</sup> in § 40 (a) "partnership liabilities" is substituted for "partnership assets, after satisfying the partnership liabilities;"<sup>3)</sup> in § 41 (1) "capital and assets" is substituted for "capital or assets"<sup>2)</sup> and "or interest" for "or to interest;"<sup>2)</sup> in § 43 (b) (1) "in paying debts" is substituted for "in paying the debts;"<sup>2)</sup> in § 45 "and common law" is substituted for "and of common law;" in § 46 "1892" is substituted for "1890."

A partnership "may be accurately defined to be a participation in profits and losses, if we attend to the distinction that in partnerships as to strangers a participation in losses may result out of any agreement to share profits only, contrary to the meaning and intention of the parties to

not appeared in book-form. They were published in the newspapers from time to time as delivered. Some current cases are reported in the *Royal Gazette*. The volume containing the cases from 1904 to date has not been published. The references are to the advance sheets.

<sup>1)</sup> As in force 1st January, 1912. — <sup>2)</sup> On this point the text of the Newfoundland *Partnership Act, 1892*, (55 Vic. c. 7) as contained in the volume of Legislative Acts of 1892, agrees with the text of the Imperial act. The Act 55 Vic. c. 7 was repealed by the *Consolidated Statutes Publication Act, 1892*, § 13, and the text of the act is now as above set forth.

— <sup>3)</sup> This is a serious error. The corresponding section of the Act 55 Vic. c. 7, as contained in the volume of Legislative Acts of 1892 is identical with the text of the Imperial act. This Act was repealed by the *Consolidated Statutes Publication Act, 1892*, § 13. It is questionable whether the omitted words can be supplied by judicial interpretation. — Cp. *Kennedy v. Gibson*, (1869), 8 Wall. (U. S.) 498; *Hancock v. Lablache*, (1878), L. R. 3 C. P. D. 197; *State v. Lee*, (1873), 37 Iowa, 402; *Atlanta v. Gate City Gas Light Co.*, (1883), 71 Georgia, 106; *Mobile Savings Bank v. Patty*, (1882), 16 Federal Reporter, 751.

that agreement; whereas a partnership inter se can only take place where there is the manifest intention of the parties to share both profit and loss, which intention may be either express, as where A promises B that he will employ his capital in a certain way and allow A half the profits that will arise from such employment of it, A will bear half of any losses that may result from the adventure; or it may be implied from there being a joint ownership of the partnership stock." — (Per Tucker, C. J.) *Waller v. Broom*, (1825), Tucker, 504; 1 Morr. 438. Where money and credit are loaned to another to enable him to carry on a business, upon the condition of receiving a part of the profits, the lender is not entitled to a dividend out of the bankrupt borrower's estate until all other creditors are paid in full. — *Reddy v. Trustees of Hackett*, (1825), Tucker, 513; 1 Morr. 446. Land bought with funds belonging to the partnership is partnership property, although the conveyance was made to one of the partners. — *Ex parte Banks*, *In re Elliott*, (1823), Tucker, 396; 1 Morr. 349. As to the power of a partner to bind the firm by an admission of a cause of action, see *Hunt v. Hunt*, (1821), Tucker, 263; 1 Morr. 234. As to liability on a bill of exchange drawn by one partner on partnership account, and accepted by another partner, see *Square v. Morey & Co.*, (1818), Tucker, 139; 1 Morr. 122. In the absence of an agreement to the contrary, a partner is not entitled to remuneration for extra services rendered to the partnership. — *Bennett v. McKay*, (1879), 4 Morr. 178. Where a retiring partner holds himself out, or permits himself to be held out as a continuing member of the firm, he is liable for the debts of the partnership to all creditors who, on the faith of such holding out, extended credit to the firm. — *Monroe v. Falle*, (1882), 4 Morr. 384. Where no time for the duration of a partnership is fixed, the partnership is dissolved by the termination or failure of the undertaking for which it was formed, or by express notice given by any one of the partners. — *Walsh v. Scanlan*, (1892), 5 Morr. 633. As to a partnership agreement held to be within the Statute of Frauds, see *Tilley v. Cleary & Henderson*, (1887), 5 Morr. 209. In an accounting a partner may be estopped from contesting the validity of certain charges. — *Bennett v. McKay*, (1879) 4 Morr. 178; s. c. (1883), 4 Morr. 462; *Browning v. Browning*, (1887), 5 Morr. 161. As to service outside the jurisdiction on a partner for an account, see *Greene v. Pearson*, (1900), M. & B. 357. The assignee of a bankrupt partner is not entitled to legacies bequeathed to the partners while the partnership is indebted to the testator's estate. — *Trustees of McLea v. Executor of McLea*, (1875), 4 Morr. 37.

## Limited Partnerships.

### Cons. St. 1892, c. 98. Of Limited Partnerships.

**Purposes of limited partnerships.** 1. Limited partnerships for the transaction of mercantile, mechanical or manufacturing business within this Colony may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed; but the provisions of this chapter shall not be construed to authorise any such partnership for the purpose of transacting the business of banking or making insurance.

**Partnership to consist of general and special partners, their liabilities.** 2. Such partnerships may consist of one or more persons who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute in actual cash payments, or in property at its actual cash value, a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them to the capital.

**General partners to transact business.** 3. The general partners only shall be authorized to transact business and sign for the partnership, and to bind the same.

**Certificate to be signed by all the partners.** 4. The persons desirous of forming such partnership shall make and severally sign a certificate, similar in effect to Form No. 1 in the Schedule hereunto annexed, and which certificate shall contain: 1. The name or firm under which such partnership is to be conducted. 2. The general nature of the business intended to be transacted. 3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence. 4. The amount of capital which each special partner shall have contributed to the common stock. 5. The period at which the partnership is to commence, and the period at which it will terminate.

**Certificate, before whom and how acknowledged.** 5. The certificate shall be acknowledged by the several persons signing the same before a notary public, who shall certify such acknowledgment, whether made abroad or in this Colony, under his seal or office, to the effect of Form No. 2 in the Schedule to this Chapter annexed.



**In what places to be filed and recorded. 6.** The certificate so acknowledged and certified shall be filed in the office of the Colonial Secretary, and shall be recorded in the said office at large, in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situate in different districts, a transcript of the certificate and of the acknowledgment thereof, duly certified by the Colonial Secretary under his official seal, shall be filed and recorded in like manner in the office of the registrar of deeds for such district.

**Affidavit also to be filed. 7.** At the time of filing the original certificate, with the evidence of the acknowledgment thereof as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually and in good faith paid; and which affidavit shall be similar in effect to Form No. 3 in the annexed Schedule.

**Partnership, when deemed formed, effects of false certificate. 8.** No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed; and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.

**Terms of partnership, how published, effect of omission. 9.** The partnership shall publish the terms of the partnership, when registered, for at least six weeks immediately after such registry in the *Royal Gazette* and in one or two other newspapers to be designated by the Colonial Secretary, and to be published in this Colony; and if such publication be not made, the partnership shall be general; and such advertisement shall be similar in effect to Form No. 1 in the said annexed Schedule.

**Affidavit of publication, where to be filed, effect as evidence. 10.** Affidavits of the publication of such notice by the printers of the newspapers in which the same shall be published shall be filed in the office of the Colonial Secretary, and shall be evidence of the facts therein contained, and which affidavits shall be similar in effect to Form No. 5 in the said annexed Schedule.

**Renewals, etc., of partnership, how to be made. 11.** Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

**Alterations deemed dissolution. 12.** Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership, unless such alteration shall have been made according to the provisions of the twenty-fourth section of this chapter; and any such partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the last preceding section.

**In what form and name business to be carried on. 13.** The business of the partnership shall be conducted under a firm, in which the names of the general partners only shall be inserted, without the addition of the word "company," or any other general term; and if the name of any special partner shall be used in such firm, with his privity, he shall be deemed a general partner.

**Suits to be in names of general partners. 14.** Suits in relation to the business of the partnership may be brought and conducted by and against the general partners in the same manner as if there were no special partners.

**Special partner not to withdraw his capital. 15.** No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided, he may also receive his portion of such profits.

**When to refund interest paid to him. 16.** If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced,

the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital with interest.

**Rights of special partners and restriction on them. 17.** A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management, and any remuneration of special partners or any other persons acting as servants or agents for any such partnership by a share of the profits or otherwise shall not render them liable as general partners; but he shall not contract any business on account of the partnership, nor be employed for that purpose as agent, attorney or otherwise. If he shall interfere contrary to these provisions he shall be deemed a general partner.

**Liability of general partners to account. 18.** The general partners shall be liable to account to each other and to the special partners for their management of the concern, both in law and equity, as other partners are now by law.

**Liability and punishment of parties guilty of fraud. 19.** Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage; and shall also be liable to an indictment for a misdemeanour, punishable on conviction by fine or imprisonment, or both, in the discretion of the Court by which he shall be tried.

**Assignment of certain creditors void. 20.** Every sale, assignment or transfer of any of the property or effects of such partnership made by such partnership when actually insolvent or in contemplation of insolvency, or after or in contemplation of a declaration of insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership; and every judgment confessed, lien created, or security given by such partnership, under the like circumstances and with the like intent, shall be void as against the creditors of such partnership.

**Certain assignments void. 21.** Every such sale, assignment or transfer of any of the property or effects of a general partner, made by such general or special partner when actually insolvent, or in contemplation of a declaration of insolvency or after or in contemplation of a declaration of insolvency of the partnership, with the intent of giving to any creditor of his own or of the partnership a preference over other creditors of the partnership, and every judgment confessed, lien created, or security given by any such partner, under the like circumstances and with the like intent, shall be void as against the creditors of the partnership.

**Certain acts of special partner to render him liable. 22.** Every special partner who shall violate any of the provisions of the two last preceding sections, or who shall concur in or assent to any such violation by the partnership or by any individual partner, shall be liable as a general partner.

**Special partners not to claim as creditors in case of insolvency of firm. 23.** In case of the insolvency or bankruptcy of the partnership no special partner shall under any circumstances be allowed to claim as a creditor until the claims of all the other creditors of the partnership shall be satisfied.

**Dissolution by acts of partners. 24.** No dissolution of such partnership by the acts of the parties shall take place previous to the time specified in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the Colonial Secretary's office, in which the original certificate was recorded, and published once in each week, for four weeks, in the *Royal Gazette*, and any other local newspaper published in this Colony.

### *Schedule of Forms.*

#### *No. 1. Certificate of Formation of Limited Partnership.*

This is to certify that we, whose names are undersigned, are desirous of forming a limited partnership, and 1st. That the name or firm under which such partnership is to be conducted is: (*here insert the name or firm, as "George Thompson," or "Thompson & Black," as the case may be.*) 2nd. That the general nature of the business intended to be transacted by such partnership is: (*here insert the general nature of the business, as the buying and selling at wholesale and retail, of tobacco, snuffs and cigars, and such other articles as are usually bought and sold by persons trading as tobaccoists or dealers in tobacco.*) 3rd. That the names of all the general and special partners interested in the said copartnership are as follows: (*here insert the names and places of residence of each partner, and specify which are general and which are special partners, as thus: George Thompson, James Black, Henry Lloyd and Alfred Smee; that*



the said George Thompson is a general partner, and his place of residence is in .....; that the said James Black is a general partner, and his place of residence is also in .....; that the said Henry Lloyd is a special partner, and his place of residence is in .....; and that the said Alfred Smee is a special partner, and his place of residence is in .....; as the case may be.) 4th. That the amount of capital which each of the said special partners has contributed to the common stock of the said partnership is as follows: (here insert as thus, or as the case may be, — The said Henry Lloyd the sum of ....., and the said Alfred Smee the sum of .....). 5th. That the period at which the said partnership is to commence is the ..... day of ..... 18... (insert the date, which should be after the certificate is filed and recorded); and the period at which the said partnership is to terminate is the ..... day of ... 18... (insert the date).

As witness our hands, on this .... day of ..... 18...

(Signed.)

George Thompson,  
James Black,  
Henry Lloyd,  
Alfred Smee.

#### No. 2. Notarial Certificate.

On this ..... day of ..... 18.., before me, A. B., of St. John's, (or as the case may be) Notary Public, duly admitted and sworn and practising in St. John's (or as the case may be) aforesaid, personally came the above named George Thompson, James Black, Henry Lloyd and Alfred Smee, to me known to be the persons described in and who signed the above certificate, and who severally acknowledge to me that they severally signed the said certificate.

#### No. 3. Affidavit to be Filed with Certificate.

George Thompson of this city maketh oath and saith:

That he is one of the general partners named in the above written (or annexed) certificate, and that the said amounts specified in the said certificate to have been contributed by each of the special partners, in the said certificate named, to the common stock of the said partnership, in the said certificate also named, have been actually and in good faith paid in cash (or in property at its actual cash value, specifying the general description of the property, as the case may be).

Sworn, etc.

(Signed.)

George Thompson.

#### No. 4. Advertisement of Terms of Partnership.

(Similar in effect to Form No. 1.)

#### No. 5. Affidavit of Publication by Printer of Newspaper.

A. B., of ....., maketh oath and saith that he is printer of the newspaper known as the (insert name of paper), published daily (or weekly) at (insert place of publication of newspaper), and that the advertisement, a copy whereof is hereto annexed, was published in said newspaper for six weeks successively, that is to say: in the issues of said newspaper, dated respectively the

day of the ..... day of, the ..... day of, the ..... day of, the ..... day of  
(insert dates when advertisement appeared).

Sworn, etc.

(Signed.)

A. B.

## Compromises of Partners and Joint Debtors.

### Cons. St. 1892, c. 99. Of the Compromises of Partners and Joint Debtors.

**Compromises of one or more partners of firms with creditors.** 1. Whenever any copartnership firm shall be dissolved by mutual consent or otherwise, any one or more of the individuals who was or were embraced in such copartnership firm may make a separate composition or compromise with any one or all of the creditors of such copartnership firm; and such composition or compromise shall be a full and effectual discharge to the debtor or debtors making the same, and to them only, of and from all and every liability to the creditor or creditors with whom the same is made or incurred by reason of his or their connection with such copartnership firm.

**Memorandum of release or compromise.** 2. Every such debtor or debtors making such composition or compromise shall take from the creditor or creditors with whom he may make the same a note or memorandum in writing, exonerating him or them from all and every individual liability incurred by reason of such connection with such copartnership firm, which note or memorandum may be given, in evidence by such debtor or debtors in bar of such creditors' right of recovery against him or them; and if such liability shall be by judgment in any court of record in this Colony, then on a production to and filing with the clerk thereof the said note or memorandum in writing, duly acknowledged by the party or parties making the same, in the same manner as satisfaction of judgment is now required by law to be acknowledged, such clerk shall discharge said judgment or record so far as the said compromising debtor or debtors shall be concerned.

**Responsibility and right of the other copartners.** 3. Such compromise or composition with an individual member of a firm shall not discharge the other copartners, nor shall it impair the rights of the creditor to proceed at law or in equity against the members of such copartnership firm as have not been discharged. The member or members of such copartnership firm so proceeded against shall be permitted to set off any demand against the said creditor or creditors which could have been set off had such suit been brought against all the individuals composing such firm, nor shall such compromise or discharge of an individual of a firm prevent the other members of such firm from availing themselves of any defence at law or equity that would have been available had not this chapter been passed, except that they shall not set up the discharge of one individual as a discharge of the other copartners, unless it shall appear that all were intended to be discharged.

**Liability of party compromising to contribute.** 4. Such compromise or composition of an individual of a firm with a creditor of such firm shall in no wise affect the rights of the other copartners to call on the individual making such compromise for his rateable proportion of such copartnership debt, the same as if this chapter had not passed.

**Preceding provisions extended to joint debtors.** 5. The above provisions in reference to copartners of a firm shall extend to joint debtors, who may individually compound or compromise for their joint indebtedness, with the like effect in reference to creditors and to joint debtors of the individuals so compromising as is above provided in reference to copartners.

## Companies.

### a) 62 & 63 Vic. c. 10. An Act respecting Companies (19th July, 1899).<sup>1)</sup>

#### *Preliminary.*

**Short title.** 1. This Act may be cited for all purposes as *The Companies Act, 1899*.  
Imp. § 295.

**Interpretation of terms.** 2. In the construction of this Act and of the Schedules thereto, and of any rules that may be made thereunder, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have the meaning following: a) "Company" shall mean a company incorporated under this Act; b) "Court" shall mean the Supreme Court of Newfoundland; c) "Judge" shall mean a judge of the Supreme Court; d) "Registrar" shall mean the Registrar of Companies appointed under this Act; e) "Gazette" shall mean the *Royal Gazette*; f) "Rules" means rules made under this Act and includes forms; g) "Prescribed" means prescribed by rules; h) For the purposes of this Act the expression "registered office of a company" shall mean the place which has been the registered office of the company for the greater part of the six months immediately preceding the presentation of the petition for winding up the company; i) "Office copy" shall mean a copy certified by the proper officer.

Imp. § 285

**Prohibition of banking companies.** 3. No company or association shall be formed under this Act for the purpose of carrying on the business of banking.

Imp. § 1 (1).

<sup>1)</sup> The references in the notes are to the *Imperial Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), unless otherwise indicated.



**Prohibition of partnerships exceeding certain number.** 4. No company, association, or partnership consisting of more than ten persons shall hereafter be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of the Legislature.

Imp. § 1 (2). A mutual insurance club is an association for the acquisition of gain, within this section. — *Roberts v. Snow*. (1906).

[5. Contains an analysis of the Act.]

## *Part I. Constitution, Incorporation, and Registration of Companies and Associations under this Act.*

### *Memorandum of association.*

**Mode of forming company.** 6. Any three or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company, with or without limited liability.

Imp. § 2.

**Mode of limiting liability of members.** 7. The liability of the members of a company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

Imp. § 2.

**Memorandum of association of a company limited by shares.** 8. [As amended by 63 Vic. 2d Sess. c. 3, § 4, and 6 Edw. 7 c. 6, § 1]. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things, that is to say: 1. The name of the proposed company, with the addition of the word "limited" as the last word in such name; [2. Is repealed by 6 Edw. 7 c. 6, § 1]; 3. The objects for which the proposed company is to be established; 4. A declaration that the liability of the members is limited; 5. The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount. Subject to the following regulations: a) That no subscriber shall take less than one share; b) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes; [c] Is repealed by 63 Vic. 2d Sess. c. 3, § 4.]

Imp. § 3.

**Memorandum of association of a company limited by guarantee.** 9. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following things, that is to say: 1. The name of the proposed company, with the addition of the word "limited" as the last word in such name; 2. The town in which the registered office of the company is proposed to be situate; 3. The objects for which the proposed company is to be established; 4. A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

Imp. § 4.

**Memorandum of association of an unlimited company.** 10. Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association shall contain the following things, that is to say: 1. The name of the proposed

company; 2. The town in which the registered office of the company is proposed to be situate; 3. The objects for which the proposed company is to be established.

Imp. § 5.

**Signature and effect of memorandum of association. 11.** The memorandum of association shall be signed by each subscriber in the presence of and be attested by one witness at the least. It shall when registered bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained on the part of himself, his executors and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

Imp. § 6.

#### *Articles of association.*

**Regulations to be prescribed by articles of association. 12.** The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. The articles shall be expressed in separate paragraphs, numbered arithmetically. They may adopt all or any of the provisions contained in the Table marked A. in the first Schedule hereto. They shall in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration. In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Imp. § 10. Where under the by-laws of a company directors are elected to serve for a certain period, a meeting cannot be held for the election of new directors to serve for the term of office of the former directors. — *Ex parte Mc Gibbon*, (1889), 5 Morr. 417.

**Application of Table A. 13.** In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the Table marked A. in the first Schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

Imp. § 11.

**Signature and effect of articles of association. 14.** The articles of association shall be written or printed and shall be signed by each subscriber in the presence of, and be attested by, one witness at least. When registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his executors and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act; and all moneys payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company, in the nature of a specialty debt.

Imp. § 12.

#### *Registration.*

**Appointment, duties, etc., of Registrar. 15.** The registration of companies under this Act shall be conducted as follows, that is to say: 1. The Governor in Council may appoint a Registrar under this Act, and remove him at pleasure; 2. The Governor in Council may make such regulations as he thinks fit with respect to the duties to be performed by such Registrar; 3. The Governor in Council may, from time to time, determine the place at which the office for the registration of companies is to be established; 4. The Governor in Council may, from time to time, direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies; 5. Every person may inspect the documents



kept by the Registrar; and there shall be paid for such inspection such fees as may be appointed by the Governor in Council, not exceeding twenty-five cents for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar; and there shall be paid for such certificate of incorporation, certified copy or extract, such fees as the Governor in Council may appoint, not exceeding one dollar for the certificate of incorporation, and not exceeding ten cents for each folio of such copy or extract; 6. There shall be paid to the Registrar such salary as the Governor in Council may direct.

Imp. § 243.

**Registration of memorandum and articles of association, and fees.** 16. The memorandum of association and the articles of association, if any, shall be delivered to the Registrar, who shall retain and register the same. There shall be paid to the Registrar by a company having a capital divided into shares, in respect of the several matters mentioned in the Table marked B in the first Schedule hereto, the several fees therein specified, or such smaller fees as the Governor in Council may from time to time direct; and by a company not having a capital divided into shares, in respect of the several matters mentioned in the Table marked C in the first Schedule hereto, the several fees therein specified, or such smaller fees as the Governor in Council may from time to time direct. All fees paid to the said registrar in pursuance of this Act shall be paid over to the Minister of Finance and Customs for the use of the Colony.

Imp. § 244.

**Effect of registration.** 17. Upon the registration of the memorandum of association and of the articles of association, in cases where articles of association are required by this Act or by the desire of the parties to be registered, the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited. The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned. A certificate of the incorporation of any company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with. Any certificate of the incorporation of any company given by the Registrar shall be received in evidence as if it were the original certificate; and any copy of or extract from any of the documents or part of the documents kept and registered at the office for the registration of joint stock companies in this Colony, if duly certified to be a true copy under the hand of the Registrar, and whom it shall not be necessary to prove to be the Registrar, shall, in all legal proceedings, civil or criminal, and in all cases whatsoever be received in evidence as of equal validity with the original document.

Imp. § 16.

**Copies of memorandum and articles to be given to members.** 18. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of the sum of twenty five cents or such less sum as may be prescribed by the company for each copy; and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member, in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding five dollars.

Imp. § 18.

**Prohibition of identity of names in companies.** 19. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved, and testifies its consent in such manner as the Registrar requires; and if any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first mentioned

company may, with the sanction of the Registrar, change its name, and upon such change being made the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Imp. § 8.

**Power of Registrar to strike names of defunct companies off the register. 20.** 1. Where the registrar has reasonable cause to believe that a company, whether registered before or after the passing of this Act, is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation. 2. If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiration of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received by him, and that if an answer is not received to the second letter, within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register. 3. If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer thereto, the Registrar may publish in the *Gazette* and send to the company a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register, and the company will be dissolved. 4. At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by such company, strike the name of such company off the register, and shall publish notice thereof in the *Gazette* and on the publication in the *Gazette* of such last-mentioned notice the company whose name is so struck off shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved. 5. If any company or member thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member may apply to the Court; and the Court, if satisfied that the company was at the time of the striking off carrying on business or in operation, and that it is just to do so, may order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had never been struck off. 6. A letter or notice authorized or required for the purposes of this section to be sent to a company may be sent by post addressed to the company at its registered office, or if no office has been registered, addressed to the care of some director or officer of the company, or if there be no director or officer of the company, whose name and address are known to the Registrar, the letter or notice (in identical form) may be sent to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in that memorandum.

Imp. § 242.

#### *Prospectus.*

**Prospectus, &c., to give particulars of contracts made prior to issue of same.** 21. Every prospectus of a company and every notice inviting persons to subscribe for shares in any company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof before the issue of such prospectus or notice, whether subject to adoption by the directors of the company, or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract.

Imp. § 81.



**Liability for statements in prospectus. 22.** Where a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorized such naming of him is named in the prospectus or notice, as a director of the company or as having agreed to become a director of the company either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith unless it is proved: a) With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe that the statement was true; and b) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or an extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of, or extract from, the report or valuation. Provided always, that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of an extract from the report or valuation, such director, person named, promoter or other person, who authorized the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and c) With respect to every such untrue statement purporting to be a statement made by an official person, or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of, or extract from, such document, or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given. 2. A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company. 3. Where any company existing at the passing of this Act, which has issued shares or debentures, shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorized the issue of such prospectus or notice or have adopted or ratified the same. 4. In this section the word "expert" includes any person whose profession gives authority to a statement made by him.

Imp. § 84 (1, 2).

**Indemnity where name of person has been improperly inserted as a director.**

**23.** Where any such prospectus or notice as aforesaid contains the name of a person as a director of the company or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorized the issue of such prospectus or notice shall be liable to indemnify the person named as a director of the company, or as having agreed to

become a director thereof as aforesaid, against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

Imp. § 84 (3).

**Contribution from co-directors, etc.** 24. Every person who by reason of his being a director, or named as a director or as having agreed to become a director or of his having authorized the issue of the prospectus or notice has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

Imp. § 84 (4).

## *Part II. Distribution of Capital and Liability of Members and Directors of Companies and Associations under this Act.*

### *Distribution of capital.*

**Nature of interest in company.** 25. The shares or other interest of any member in a company shall be personal estate, capable of being transferred in manner provided by the regulations of the company, and each share shall in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

Imp. § 22. An assignment of shares in a company as security for a loan does not require registration under the *Registration of Deeds Act*. — *Trustees of O'Deady v. Mc Loughlan*, (1890), 5 Morr. 457.

**Definition of "member."** 26. The subscribers of the memorandum of association of any company shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company, shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company and whose name is entered on the register of members, shall be deemed to be a member of the company.

Imp. § 24.

**Transfer by personal representative.** 27. Any transfer of the share or other interest of a deceased member of a company made by his personal representative, shall notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Imp. § 29.

**Register of members.** 28. Every company shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars: 1. The names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number: And of the amount paid or agreed to be considered as paid on the shares of each member; 2. The date at which the name of any person was entered in the register as a member; 3. The date at which any person ceased to be a member. And any company acting in contravention of this section shall incur a penalty not exceeding twenty-five dollars for every day during which its default in complying with the provisions of this section continues, and every director or manager of the company who shall knowingly and wilfully authorize or permit such contravention shall incur the like penalty.

Imp. § 25.

**Annual list of members.** 29. Every company having a capital divided into shares, shall make, once at least in every year, a list of all persons, who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the company; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars: 1. The amount of the capital of the company, and the number of shares into which it is divided; 2. The number of shares taken from the commencement of the company up to the date of the summary; 3. The amount of calls made on each share; 4. The total amount of calls received; 5. The total



amount of calls unpaid; 6. The total amount of shares forfeited; 7. The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them. The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the Registrar.

Imp. § 26. See 6 Edw. 7, c. 6, § 7, *infra*.

**Penalty on company etc., not keeping a proper register.** 30. If any company having a capital divided into shares makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary, as is hereinbefore mentioned, to the Registrar, such company shall incur a penalty not exceeding twenty-five dollars for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 26 (5).

**Company to give notice of consolidation or of conversion of capital into stock.** 31. Every company having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the Registrar of such consolidation, division or conversion, specifying the shares so consolidated, divided or converted.

Imp. § 42.

**Effect of conversion of shares into stock.** 32. Where any company having a capital divided into shares has converted any portion of its capital into stock and given notice of such conversion to the Registrar all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

Imp. § 43.

**Entry of trusts on register.** 33. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the Registrar.

Imp. § 27.

**Certificate of shares or stock.** 34. A certificate, under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.

Imp. § 23.

**Inspection of register.** 35. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned. Except when closed as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member *gratis* and to the inspection of any other person upon the payment of twenty-five cents, or such less sum as the company may prescribe, for each inspection; and every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of ten cents for every hundred words required to be copied. If such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding ten dollars and a further penalty not exceeding ten dollars for every day during which such refusal continues, and every director and manager of the company who shall knowingly authorize or permit such refusal shall incur the like penalty; and in addition to the above penalty, any judge sitting in chambers may, by order, compel an immediate inspection of the register.

Imp. § 30.

**Power to close register.** 36. Any company may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Imp. § 31.

**Notice of increase of capital and of members to be given to Registrar. 37.** Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the Registrar shall forthwith record the amount of such increase of capital or members. If such notice is not given within the period aforesaid the company in default shall incur a penalty not exceeding twenty-five dollars for every day during which such neglect to give notice continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 44.

**Remedy for improper entry or omission of entry in register. 38.** If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself may by motion in court, or by application to a judge sitting in chambers, apply for an order of the court that the register may be rectified; and the Court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion or application and any damages the party aggrieved may have sustained. The Court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the Court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register; provided that the Court may direct an issue to be tried, in which any question of law may be raised.

Imp. § 32 (1—3).

**Notice to Registrar of rectification of register. 39.** Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the Registrar, the Court shall by its order direct that due notice of such rectification be given to the Registrar.

Imp. § 32 (4).

**Register to be evidence. 40.** The register of members shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Imp. § 33.

#### *Liability of members.*

**Liability of present and past members of company. 41.** In the event of a company being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, that is to say: 1. No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up; 2. No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member; 3. No past member shall be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act; 4. In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares, in respect of which he is liable as a present or past member; 5. In the case of a company limited by guarantee, no



contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association; 6. No sum due to any member of a company in his character of a member by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

Imp. § 123.

*Liability of directors.*

**Company may have directors with unlimited liability. 42.** Where a company is formed as a limited company, the liability of the directors or managers of such company, or the managing director, may, if so provided by the memorandum of association, be unlimited.

Imp. § 60 (1).

**Liability of director past and present where liability is unlimited. 43.** The following are the contributions to be required in the event of the winding-up of a limited company from any director or manager, whose liability is in pursuance of this Act unlimited: 1. Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited company; 2. No contribution required from any past director or manager, who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company; 3. No contribution required from any past director or manager, in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company; 4. Subject to the provisions contained in the regulations of the company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up.

Imp. § 123 (2).

**Director with unlimited liability may have set-off. 44.** In the event of the winding-up of any limited company, the Court, if it think fit, may make to any director or manager of such company whose liability is unlimited, the same allowance by way of set-off as under section 162 of this Act it may make to a contributory where the company is not limited.

**Notice to be given to director on his election that his liability will be unlimited. 45.** In any limited company in which, in pursuance of this Act, the liability of a director or manager is unlimited, the directors or managers of the company (if any) and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited, and the promoters, directors, managers, and secretary (if any) of such company, or one of them, shall, before such person accepts such office or acts therein, give him notice in writing that his liability will be unlimited. If any director, manager, or proposer make default in adding such statement, or if any promoter, director, manager, or secretary make default in giving such notice, he shall be liable to a penalty not exceeding five hundred dollars, and shall also be liable for any damage which the person so elected or appointed may sustain from such default, but the liability of the person elected or appointed shall not be affected by such default.

Imp. § 60 (2, 3)

*Calls upon shares.*

**Company may have some shares fully paid and others not. 46.** Any company if authorized by its regulations as originally framed or as altered by special resolution, may do any one or more of the following things, namely: 1. Make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls. 2. Accept

from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made: 3. Pay dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Imp. § 39.

**Manner in which shares are to be issued and held. 47.** Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing and filed with the Registrar at or before the issue of such shares.

#### *Filing of contracts.*

**Remedy for omission to file contracts with Registrar. 48.** 1. Whenever any shares in the capital of any company, credited as fully or partly paid up, shall have been or may be issued for a consideration other than cash, and at or before the issue of such shares no contract or no sufficient contract is filed with the Registrar, the company, or any person interested in such shares or any of them, may apply to the Court for relief, and the Court, if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief, may make an order for the filing with the Registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period it shall, in relation to such shares, operate as if it had been duly filed with the Registrar aforesaid before the issue of such shares. 2. Any such application may be made in the manner in which an application to rectify the register of members may be made under section 38 of this Act, and either before or after an order has been made, or an effective resolution has been passed for the winding-up of such company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid, and any such application shall, if not made by the company, be served on the company. 3. Any such order may be made on such terms and conditions as the Court may think fit, and the Court may make such order as to costs as it deems proper, and may direct that an office copy of the order shall be filed with the Registrar, and the order shall in all respects have full effect. 4. Where the Court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience, or is impracticable, it may in lieu thereof, direct the filing of a memorandum in writing, in a form approved by the court, specifying the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period, it shall in relation to such shares operate as if it were a sufficient contract in writing, and had been duly filed with the Registrar before the issue of such shares.

Imp. § 88.

**Jurisdiction of Court. 49.** The jurisdiction in the foregoing section given to the Court is not by implication to curtail or derogate from its jurisdiction to grant relief in any such case under section 38 of this Act or otherwise.

Imp. § 88 (3)

#### *Transfer of shares.*

**Transfer may be registered at request of transferor. 50.** A company shall, on the application of the transferor of any share or interest in the company, enter in its register of members the name of the transferee of such share or interest, in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

Imp. § 28.

#### *Share-warrants.*

**Warrant of limited shares fully paid up may be issued in name of bearer. 51.** In the case of a company limited by shares, the company, if authorized so to do by its regulations as originally framed, or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share, which is fully paid up, or with respect to stock, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock



therein specified, and may provide by coupons or otherwise for the payment of the future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a share-warrant.

Imp. § 37 (1).

**Effect of share-warrant. 52.** A share-warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share-warrant.

Imp. § 37 (2).

**Re-registration of bearer of a share-warrant in the register. 53.** The bearer of a share-warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share-warrant in respect of the shares or stock specified therein, without the share-warrant being surrendered and cancelled.

Imp. § 37 (3).

**Regulations of the company may make the bearer of a share warrant a member. 54.** The bearer of a share-warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for such purposes as may be prescribed by the regulations: Provided that the bearer of a share-warrant shall not be qualified in respect of the shares, or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

Imp. § 37 (4).

**Entries in register where share-warrant issued. 55.** On the issue of a share-warrant, in respect of any share or stock, the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars: 1. The fact of the issue of the warrant; 2. A statement of the shares or stock included in the warrant, distinguishing each share by its number; 3. The date of the issue of the warrant. And, until the warrant is surrendered, the above particulars shall be deemed to be the particulars which are required by the twenty-eighth section of this Act to be entered in the register of members of a company; and, on the surrender of a warrant, the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Imp. § 37 (5, 6).

**Particulars to be contained in annual summary. 56.** After the issue by the company of a share-warrant the annual summary required by the twenty-ninth section of this Act shall contain the following particulars: the total amount of shares or stock for which share-warrants are outstanding at the date of the summary, and the total amount of share-warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

Imp. § 26.

[57—59. Contain provisions relating to the punishment of persons guilty of forgery of share-warrants or coupons or of personating owners of shares, or of unauthorized engraving of plates, etc., of share-warrants or coupons; similar to Imp. § 38.]

### *Part III. Management and Administration of Companies and Associations under this Act.*

#### *Protection of creditors.*

**Registered office of company. 60.** Every company shall have a registered office to which all communications and notices may be addressed. If any company carries on business without having such an office, it shall incur a penalty not exceeding twenty-five dollars for every day during which business is so carried on.

Imp. § 62 (1, 3).

**Notice of situation of registered office. 61.** Notice of the situation of such registered office, and of any change therein, shall be given to the Registrar, and recorded by him. Until such notice is given the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Imp. § 62 (2).

**Publication of name by a limited company. 62.** Every limited company, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

Imp. § 63 (1).

**Penalties on non-publication of name. 63.** If any limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding twenty-five dollars for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall be liable to the like penalty; and if any director, manager, or officer of such company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such company, or signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of two hundred and fifty dollars, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Imp. § 63 (2, 3).

**Register of mortgages. 64.** Every limited company shall keep a register of all mortgages and charges specially affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge. If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding two hundred and fifty dollars. The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding twenty-five dollars, and a further penalty not exceeding ten dollars for every day during which such refusal continues; and in addition to the above penalty, any judge sitting in chambers may, by order, compel an immediate inspection of the register.

Imp. §§ 100, 101.

[65. Is repealed by 63 Vic. 2d Sess. c. 3. § 4.]

**List of directors to be sent to Registrar. 66.** Every company not having a capital divided into shares shall keep at its registered office a register containing the names and addresses and the occupations of its directors and managers, and shall send to the Registrar a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

Imp. § 75 (1).

**Penalty on company not keeping register of directors. 67.** If any company not having a capital divided into shares, makes default in keeping a register of its directors and managers or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding twenty-five dollars for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 75 (2).



**Promissory notes and bills of exchange. 68.** A promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any company if made, accepted or endorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or endorsed by or on behalf or on account of the company by any person acting under the authority of the company.

Imp. § 77.

**Contracts — how made. 69.** Contracts on behalf of any company may be made as follows, that is to say: 1. Any contract which if made between private persons would be by law required to be in writing, under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged; 2. Any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged; 3. Any contract which if made between private persons would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors and all other parties thereto, their executors or administrators, as the case may be.

Imp. § 76.

**Prohibition against carrying on business with less than three members. 70.** If any company carries on business when the number of its members is less than three for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than three members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same without the joinder in the action or suit of any other member.

Imp. § 115.

#### *Meetings.*

**General meeting of company. 71.** A general meeting of every company shall be held once at least in every year.

Imp. § 64.

**Company to hold meeting within four months after registration. 72.** Every company shall hold a general meeting within four months after its memorandum of association is registered; and if such meeting is not held the company shall be liable to a penalty not exceeding twenty-five dollars a day for every day after the expiration of such four months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly authorizes or permits such default shall be liable to the same penalty.

Imp. § 65.

#### *Alteration of memorandum.*

**Power of company to alter memorandum of association. 73.** Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid up shares into stock, but save as aforesaid, and save as is herein after provided, no alteration shall be made by any company in the conditions contained in its memorandum of association.

Imp. § 9.

**Power to company to reduce capital. 74.** Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital; but no such resolution for

reducing the capital of any company shall come into operation until an order of the Court is registered by the Registrar as is hereinafter mentioned.

Imp. §§ 46, 47.

**Construction of "capital" and powers to reduce capital. 75.** The word "capital" in Part III of this Act shall include paid-up capital; and the power to reduce capital conferred by this Act shall include a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved notwithstanding anything in this Act contained to the contrary.

Imp. § 46.

**Company to add "and reduced" to its name for a limited period. 76.** The company shall after the date of the passing of any special resolution for reducing its capital, and subject to the qualification hereinafter contained, add to its name, until such date as the court may fix, the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company, within the meaning of this Act.

Imp. § 48.

**Company to apply to the Court for an order confirming reduction. 77.** A company which has passed a special resolution for reducing its capital, may apply to the Court by petition for an order confirming the reduction, and on the hearing of the petition the Court if satisfied that with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Imp. § 47.

**Creditors may object to reduction, and list of objecting creditors to be settled by Court. 78.** Where a company proposes to reduce its capital, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction and to be entered in the list of creditors who are so entitled to object, subject to the qualification hereinafter contained. The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction.

Imp. § 49 (1, 2).

**Court may dispense with consent of creditor on security being given for his debt. 79.** Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it think fit) dispense with such consent, on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned, that is to say: 1. If the full amount of the debt or claim of the creditor is admitted by the company, or though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated. 2. If the full amount of the debt or claim of the creditors is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it think fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

Imp. § 49 (3).



**Creditors not entitled to object to reduction in certain cases. 80.** Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital: 1. The creditors of the company shall not, unless the Court otherwise direct, be entitled to object or required to consent to the reduction; and 2. It shall not be necessary before the presentation of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced" as mentioned in section 76 of this Act. In any case in which the Court thinks fit so to do, it may require the company to publish in such manner as it thinks fit the reasons for the reduction of its capital or such other information in regard to the reduction of its as the Court may think expedient with a view to give proper information to the public in relation to the reduction of its capital by a company, and, if the Court thinks fit, the causes which led to such reduction.

Imp. §§ 49, 55.

**Order and minute to be registered. 81.** The Registrar, upon the production to him of an order of the Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court) showing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares in which it is to be divided, the amount of each share, and the amount (if any) which at the date of the registration of the minute, it is proposed shall be deemed to have been paid up on each share, shall register the order and minute, and on the registration thereof, the special resolution confirmed by the order so registered shall take effect. Notice of such registration shall be published in such manner as the Court may direct. The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

Imp. § 51.

**Minute to form part of memorandum of association. 82.** The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association; and subject as in this Act mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Imp. § 52.

**Saving of rights of creditors who are ignorant of proceedings. 83.** If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction, the company is unable, within the meaning of the one hundred and twenty-third section of this Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the company, at the date of the registration of the order and minute relating to the reduction of the capital of the company, shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and on the company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner, in all respect as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

Imp. § 53.

**Copy of registered minute. 84.** A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section it shall

incur a penalty not exceeding five dollars for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 41.

**Penalty on concealment of name of creditor.** 85. If any director, manager or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanour.

Imp. § 54.

**Shares may be divided into shares of smaller amount.** 86. Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as by subdivision of its existing shares or any of them, to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association: Provided that in the subdivision of the existing shares, the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares, from which the share of reduced amount is derived.

Imp. § 41 (1) (d).

**Special resolution to be embodied in memorandum of association.** 87. The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding five dollars for each copy in respect of which such default is made; and every director and manager of the company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 41 (3).

**Power to reduce capital by the cancellation of unissued shares.** 88. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of the passing of such resolution, have not been taken or agreed to be taken by any person; and the provisions of Part III of this Act shall not apply to any reduction of capital made in pursuance of this section.

Imp. § 41 (1) (e).

**Accumulated profits may be returned to shareholders in reduction of paid-up capital.** 89. When any company has accumulated a sum of undivided profits, which, with the consent of the shareholders, may be distributed among the shareholders in the form of a dividend or bonus, it shall be lawful for the company by special resolution to return the same or any part thereof to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount. The powers vested in the directors of making calls upon the shareholders in respect of moneys unpaid upon their shares shall extend to the amount of the unpaid capital as augmented by such reduction.

Imp. § 40 (1).

**No resolution to take effect till particulars have been registered.** 90. No such special resolution as aforesaid shall take effect until a memorandum, showing the particulars required by law in the case of a reduction of capital by order of the Court shall have been produced to and registered by the Registrar.

Imp. § 40 (2).

**Power to any shareholder to require company to retain moneys paid upon shares held by such person.** 91. Upon any reduction of paid-up capital made in pursuance of this Act, it shall be lawful for any shareholder or for any one or more of several joint shareholders, within one month after the passing of the special resolution for such reduction, to require the company to retain, and the company shall retain accordingly, the whole of the moneys actually paid upon the shares held by such



person, either alone or jointly with any other person or persons, and which, in consequence of such reduction, would otherwise be returned to him or them, and thereupon the shares in respect of which the said moneys shall be so retained, shall, in regard to the payment of dividends thereon, be deemed to be paid up to the same extent only as the shares on which payment as aforesaid has been accepted by the shareholders in reduction of their paid-up capital, and the company shall invest and keep invested the moneys so retained in such securities authorized for investment by trustees as the company shall determine, and upon the money so invested, or upon so much thereof as from time to time exceeds the amount of calls subsequently made upon the shares in respect of which such moneys shall have been retained, the company shall pay such interest as shall be received by them from time to time on such securities, and the amount so retained and invested shall be held to represent the future calls which may be made to replace the capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made, produces more or less than the amount of such call.

Imp. § 40 (3, 4).

**Company to specify amounts retained and profits returned. 92.** From and after such reduction of capital the company shall specify in the annual lists of members, to be made by them in pursuance of the twenty-ninth section of this Act, the amounts which any of the shareholders of the company shall have required the company to retain, and the company shall have retained accordingly, in pursuance of the preceding section of this Act and the company shall also specify in the statements of account laid before any general meeting of the company, the amount of the undivided profits of the company which shall have been returned to the shareholders in reduction of the paid-up capital of the company under this Act.

Imp. § 26.

**Power of company to alter objects of company subject to confirmation by the Court. 93.** 1. Subject to the provisions of this Act, a company may, by special resolution, alter the provisions of its memorandum of association with respect to the objects of the company so far as may be required for any of the purposes hereinafter specified, but in no case shall any such alteration take effect until confirmed on petition by the Court. 2. Before confirming any such alteration the Court must be satisfied: a) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and b) That with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court. Provided that the Court may in the case of any person or class of persons, for special reasons, dispense with the notice required by this section. 3. An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper. 4. The Court shall, in exercising its discretion under this Act have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always that it shall not be lawful to expend any part of the capital of the company in any such purchase. 5. The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company: a) To carry on its business more economically or more efficiently; or b) To attain its main purpose by new or improved means; or c) To enlarge or change the local area of its operations; or d) To carry on some business or businesses which, under existing circumstances, may conveniently or advantageously be combined with the business of the company; or e) To restrict or abandon any of the objects specified in the memorandum of association.

Imp. §§ 7, 9 (1—5). In the absence of a provision in the memorandum of association authorizing a sale of the whole property, assets, and good will of a company, there is no power

in the Court to confirm an alteration in the memorandum of association authorizing such sale. —  
*In re The St. John's Electric Light Co., Ltd.*, (1901), M. & B. 440.

**Registration of order together with memorandum as altered and consequences thereof.** 94. 1. Where a company has altered the provisions of its memorandum of association with respect to the objects of the company, and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration together with a copy of the memorandum of association, shall be delivered by the company to the Registrar within fifteen days from the date of the order, and the Registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Act) the memorandum so altered shall be the memorandum of association of the company. 2. If a company makes default in delivering to the Registrar any document required by this section to be delivered to him the company shall be liable to a penalty not exceeding fifty dollars for every day during which it is in default.

Imp. § 9 (6, 7).

**Power of companies to change name.** 95. Any company with the sanction of a special resolution of the company passed in manner hereinafter mentioned, and with the approval of the Governor in Council testified in writing under the hand of the Colonial Secretary, may change its name, and upon such change being made the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Imp. § 8 (3—5).

**Limited company may, by special resolution, make liability of directors unlimited.** 96. Any limited company may by a special resolution, if authorized so to do by its regulations as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers, or of the managing director; and such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution, and any default in this respect shall be deemed to be a default in complying with the provisions of the one hundred and first section of this Act, and shall be punished accordingly.

Imp. § 61.

#### *Alteration of articles.*

**Power to alter regulations by special resolution.** 97. Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any company may in general meeting from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the Table marked A in the first Schedule, where such Table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company, of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Imp. § 13.

**Definition of special "resolution."** 98. A resolution passed by a company shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote as may be present in person or by proxy (in cases where by the regulations of the company proxies are allowed) at any general meeting, of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regu-



lations of the company, to vote as may be present in person or by proxy at a subsequent general meeting, of which notice has been duly given, and held at an interval or not less than seven days, nor more than one month from the date of the meeting at which such resolution was first passed. At any meeting mentioned in this section unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company. In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

Imp. § 69.

**Provision where no regulations as to meetings. 99.** In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days notice in writing has been served on every member in manner in which notices are required to be served by the Table marked A in the first Schedule hereto, and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Imp. § 67.

**Registry of special resolution. 100.** A copy of any special resolution that is passed by any company shall be forwarded to the Registrar, and be recorded by him. If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding ten dollars for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 70.

**Copies of special resolution. 101.** Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of any special resolution shall be forwarded to any member requesting the same on payment of twenty-five cents, or such less sum as the company may direct. And if any company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding five dollars for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 7.

#### *Execution of deeds abroad.*

**Execution of deeds abroad. 102.** Any company may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in Newfoundland; and every deed signed by such attorney, on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

Imp. § 78.

#### *Inspection.*

**Examination of affairs of company by inspectors. 103.** The Court may appoint one or more competent inspectors to examine into the affairs of any company and to report thereon, in such manner as the Court may direct, under the applications following, that is to say: 1. In the case of any company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued; 2. In the case of any company not having a capital divided into shares, upon the application of mem-

bers being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

Imp. § 109 (1).

**Application for inspection to be supported by evidence. 104.** The application shall be by petition and shall be supported by such evidence as the Court may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; the Court may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Imp. § 109 (2).

**Inspection of books. 105.** It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors, all books and documents in their custody or power. Any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding twenty-five dollars in respect of each offence.

Imp. § 109 (3—5).

**Inspector shall report opinion to Court after examination. 106.** (As amended by 63 Vic. 2d Sess. c. 3, § 1). Upon the conclusion of the examination the inspectors shall report their opinion to the Court, such report shall be printed or written as the Court directs; a copy shall be forwarded by the Court to the registered office of the company and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or any one or more of them. All expenses of and incidental to any such examination, as aforesaid, shall be defrayed by the members upon whose application the inspectors were appointed, unless the Court shall direct the same to be paid out of the assets of the company.

Imp. § 109 (6, 7).

**Power of company to appoint inspectors. 107.** Any company may by special resolution appoint inspectors for the purpose of examining into the affairs of the company. The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Court with this exception, that, instead of making their report to the Court they shall make the same in such manner and to such persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspector had been appointed by the Court.

Imp. § 110.

**Report of inspectors to be evidence. 108.** A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding, as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Imp. § 111.

### *Notices.*

**Service of notices on company. 109.** Any summons, notice, order, or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company, at their registered office.

Imp. § 116.

**Rules as to notices by letter. 110.** Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post office.

**Authentication of notices of company. 111.** Any summons, notice, order, or proceeding requiring authentication by the company, may be signed by any director, secretary, or other authorized officer of the company, and need not be under



the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Imp. § 117.

*Legal proceedings.*

**Recovery of penalties. 112.** All offences under this Act made punishable by any penalty may be prosecuted in a summary manner before a stipendiary magistrate.

Imp. § 276.

**Application of penalties. 113.** The magistrate imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered; and subject to such direction all penalties shall be paid to the Minister of Finance and Customs for the use of the Colony.

Imp. § 277.

**Evidence of proceedings at meetings. 114.** Every company shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

Imp. § 71.

**Provision as to costs in action brought by company. 115.** Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Imp. § 278.

**Declaration in action against members. 116.** In any action brought by the company against any member to recover any call or other moneys due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other moneys due, whereby an action or suit hath accrued to the company.

*Arbitrations.*

**Power for companies to refer matters to arbitration. 117.** 1. Any company under this Act may, from time to time, by writing under its common seal, agree to refer and may refer to arbitration any existing or future difference, question or other matter whatsoever in dispute between itself and any other company or person, and the companies parties to the arbitration may delegate to the person or persons, to whom the reference is made, power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies. 2. The provisions of *The Arbitration Act, 1895*, shall be deemed to apply to arbitrations between companies and persons in pursuance of this Act.

Imp. § 119.

*Part IV. Winding-up of Companies and Associations under this Act.*

*Preliminary.*

**Meaning of contributory. 118.** The term "contributory" shall mean every person liable to contribute to the assets of a company in the event of the same being wound up. It shall also, in all proceedings for determining the persons who are to

be deemed contributories, and in all proceeding prior to the final determination of such persons, include any person alleged to be a contributory.

Imp. § 124. *Foreign Company.* Where a company incorporated in England is being wound up voluntarily at its domicile, actions against the company pending in the local courts will be stayed. *Harvey v. Newfoundland Fish Industries, Ltd.*, (1901), M. & B. 508; *Cabot Steam Whaling Co. Ltd. v. Newfoundland Fish Industries, Ltd.*, (1903), M. & B. 483.

**Nature of liability of contributory.** 119. The liability of any person to contribute to the assets of a company, in the event of the same being wound up, shall be deemed to create a debt of the nature of a specialty accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the insolvency of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

Imp. § 125.

**Contributories in case of death.** 120. If any contributory dies, either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory and such personal representatives shall be deemed to be contributories accordingly.

Imp. § 126.

**Contributories in case of insolvency.** 121. If any contributory is declared insolvent, either before or after he has been placed on the list of contributories, the trustees of his estate shall be deemed to represent such insolvent for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such insolvent, or otherwise to allow to be paid out of his assets in due course of law, any moneys due from such insolvent in respect of his liability to contribute to the assets of the company being wound up; and for the purposes of this section any person who may have taken the benefit of any Act for the relief of insolvent debtors before the passing of this Act, shall be deemed to have been declared insolvent.

Imp. § 127.

#### *Winding-up by Court.*

**Circumstances under which company may be wound up by Court.** 122. A company may be wound up by the Court as hereinafter defined, under the following circumstances, that is to say: 1. Whenever the company has passed a special resolution requiring the company to be wound up by the Court; 2. Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year; 3. Whenever the members are reduced in number to less than three; 4. Whenever the company is unable to pay its debts; 5. Whenever the Court is of opinion that it is just and equitable that the company be should wound up.

Imp. § 129.

**Company when deemed unable to pay its debts.** 123. A company shall be deemed to be unable to pay its debts: 1. Whenever a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding two hundred and fifty dollars then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor; 2. Whenever execution or other process issued on a judgment or order obtained in the Court, in favour of any creditor, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part; 3. Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts.

Imp. § 130.

**Application for winding up to be made by petition.** 124. Any application to the Court for the winding-up of a company shall be by petition; it may be presented by the company, or by any one or more creditor or creditors, contributory or contributories of the company, or by all or any of the above parties, together or separately; and every order which may be made on any such petition shall operate in



favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Imp. §§ 137 (1), 138.

**Contributory when not qualified to present winding-up petition. 125.** No contributory of a company under this Act, shall be capable of presenting a petition for winding up such company unless the members of the company are reduced in number to less than three, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former holder. Provided that where a share has during the whole or any part of the six months been held by or registered in the name of any trustee or trustees for the contributory, such share shall for the purposes of this section be deemed to have been held by and registered in the name of the contributory.

Imp. § 137.

**Commencement of winding-up by Court. 126.** A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Imp. § 139.

**Court may grant injunction. 127.** The Court may at any time after the presentation of a petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action or proceeding against the company, upon such terms as the Court thinks fit.

Imp. § 140.

**Course to be pursued by Court on hearing petition. 128.** Upon hearing the petition the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just.

Imp. § 141 (1).

**Actions to be stayed after order for winding-up. 129.** When an order has been made for winding up a company no action or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court, and subject to such terms as the Court may impose.

Imp. § 142.

**Copy of order to be forwarded to Registrar. 130.** When an order has been made for winding up a company a copy of such order shall forthwith be forwarded by the company to the Registrar, who shall make a minute thereof in his books, relating to the company.

Imp. § 143.

**Power of Court to stay proceedings. 131.** The Court may at any time after an order has been made for winding up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Imp. § 144.

**Effect of order on share capital of company limited by guarantee. 132.** When an order has been made for winding up a company limited by guarantee, and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt of the nature of a specialty due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

**Court may have regard to wishes of creditors or contributories. 133.** The Court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the Court directs, for the purpose

of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. In the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

Imp. § 145.

### *Liquidators.*

**Appointment of liquidators. 134.** For the purpose of conducting the proceedings in winding up a company and assisting the Court therein, there may be appointed a person or persons to be called a liquidator or liquidators; and the Court having jurisdiction may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of liquidator or liquidators; in all cases if more persons than one are appointed to the office of liquidator, the Court shall declare whether any act hereby required or authorized to be done by the liquidators is to be done by all or any one or more of such persons.

Imp. § 149 (1, 2, 4).

**Resignations, removals, filling up vacancies, and compensation. 135.** A liquidator may resign or be removed by the Court on due cause shown. And any vacancy in the office of a liquidator appointed by the Court shall be filled by the Court. There shall be paid to the liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the Court directs.

Imp. § 149 (6—8).

**Style and duties of liquidator. 136.** The liquidator or liquidators shall be described by the style of the liquidator or liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names; he or they shall take into his or their custody, or under his or their control, all the property, effects, and things in actions to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the Court.

Imp. §§ 149 (9), 150.

**Powers of liquidator. 137.** The liquidator shall have power, with the sanction of the court, to do the following things: To bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company; To carry on the business of the company, so far as may be necessary for the beneficial winding-up of the same; To sell the real and personal and moveable property, effects and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels; To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal; To prove, rank, claim, and draw a dividend in the matter of the insolvency of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance in the matter of such insolvency as a separate debt due from such insolvent, and rateably with the other separate creditors; To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting making, or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company, shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or indorsed by or on behalf of such company in the course of carrying on the business thereof; To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act can not be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the liquidator himself; To do and execute



all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Imp. § 151 (1, 2).

**Discretion of liquidator.** 138. The Court may provide by any order that the liquidator may exercise any of the above powers without the sanction or intervention of the Court, and where a liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

Imp. § 151 (3, 5).

*Official receiver.*

**Provisions as to liquidator.** 139. 1. On an order being made by the Court for winding up a company, the officer hereinafter mentioned, shall, by virtue of his office, become the provisional liquidator of the company, and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such. 2. The said officer shall be appointed by the Governor in Council, and shall for the purpose of his duties under this Act, be styled the official receiver. 3. When a person other than the official receiver is appointed liquidator of a company he shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the manner prescribed to the satisfaction of the Court. He shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act. 4. If any vacancy occurs in the office of liquidator of a company, the official receiver shall, by virtue of his office, be the liquidator during the vacancy. 5. The official receiver may be appointed by the Court provisional liquidator of the company at any time after the presentation of the petition and before a winding-up order has been made. 6. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company, the official receiver may be so appointed. 7. The official receiver shall receive such remuneration by way of percentage or otherwise as may be fixed by the Court.

Imp. § 84.

**Power to appoint special manager.** 140. 1. Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company or the interests of the creditors or contributories generally require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court to, and the Court may, on such application, appoint a special manager thereof during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager as may be entrusted to him by the Court. 2. The special manager shall give such security and account in such manner as the Court shall direct. 3. The special manager shall receive such remuneration as may be fixed by the Court.

Imp. § 161.

**Meeting of creditors.** 141. 1. When the Court has made an order for winding up a company the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of: a) Determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the official receiver; and b) Determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of such committee if appointed. The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions the Court shall decide the difference and make such order thereon as the Court may think fit. 2. The provisions of the third Schedule to this Act shall, subject to such modifications as may be made therein by general rules, apply to any meeting summoned in pursuance of this section. 3. In case a liquidator is not appointed by the Court, the official receiver shall be the liquidator of the company.

Imp. § 152.

**Statement of company's affairs.** 142. 1. Where the Court has made an order for winding up a company, there shall be made out and submitted to the official receiver a statement as to the affairs of the company, in the prescribed form, verified

by affidavit, and showing the particulars of the assets, debts, and liabilities of the company, the names, residences, and occupations of the creditors of the company, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require. 2. The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the order for winding up the company, as the official receiver, subject to the direction of the Court, may require to submit, and verify the same. 3. The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the Court may for special reasons appoint. 4. Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of such statement and affidavit as the receiver may consider reasonable, subject to an appeal to the Court. 5. If any person without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty dollars for every day during which the default continues. 6. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

Imp. § 147.

**Report on winding up and proceedings thereupon. 143.** 1. Where the Court has made an order for winding up a company, the official receiver shall as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the Court: a) As to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and b) If the company has failed, as to the causes of the failure; and c) Whether in his opinion further enquiry is desirable as to any matters relating to the promotion, formation, or failure of the company, or the conduct of the business thereof. 2. The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company, in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court. 3. The Court may, after consideration of any such report, direct that any person who has taken any part in the promotion or formation of a company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation of the company, or as to the conduct of the business of the company, or as to his conduct and dealings as director or officer of the company. 4. The official receiver shall take part in the examination, and for that purpose may employ a solicitor or counsel. 5. The liquidator where the official receiver is not the liquidator, and any creditor or contributory of the company may also take part in the examination either personally or by solicitor or counsel. 6. The Court may put such questions to the persons examined as to the Court may seem expedient. 7. The person examined shall be examined on oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. The person examined shall at his own cost prior to such examination, be furnished with a copy of the official receiver's report, and shall also at his own cost be entitled to employ at such examination a solicitor or counsel, who shall be at liberty to put such questions to the person examined as the Court may deem just for the purpose of enabling that person to explain or qualify any answers given by him. Provided always, that if such person is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as the Court in its discretion may think fit. Notes of the examination



shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times. 8. The Court may, if it thinks fit, adjourn the examination from time to time.

Imp. §§ 148.

**Committee of inspection. 144.** 1. A committee of inspection appointed in pursuance of this Act shall consist of persons being creditors or contributories of the company or persons holding general powers of attorney from such persons in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the Court. 2. The committee of inspection shall meet at such times as they from time to time appoint, and failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary. 3. The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting. 4. Any member of the committee may resign his office by notice in writing signed by him, and delivered to the liquidator. 5. If a member of the committee becomes insolvent, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members of the committee who together with himself represent the creditors or contributories as the case may be, his office shall thereupon become vacant. 6. Any member of the committee representing creditors may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting. Any member of the committee representing contributories may be removed by an ordinary resolution at any meeting of contributories, of which seven days' notice has been given stating the object of the meeting. 7. On a vacancy occurring in the office of a member of the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, for the purpose of filling the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy. 8. The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body. 9. If there be no committee of inspection, any act or thing or any direction or permission by this Act authorized or required to be done or given by the committee may be done or given by the Court on the application of the liquidator.

Imp. § 160.

**Power of Court to assess damages against delinquent. 145.** 1. Where in the course of the winding-up of a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the official receiver, or of the liquidator of the company, or of any creditor or contributory of the company examine into the conduct of such promoter, director, manager, liquidator, or other officer of the company and compel him to repay any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just. 2. The provisions of this section shall apply in the winding-up of any company, whether the same is being wound up by or subject to the supervision of the Court, or is being wound up voluntarily, and whether the winding-up commenced before or after the passing of this Act, and notwithstanding that the offence is one for which the offender may be criminally responsible.

Imp. § 215 (1, 2).

**Payment of money into the Newfoundland Savings' Bank. 146.** 1. Every liquidator of a company which is being wound up by an order of the Court, shall, in such manner and at such times as the Court may direct, pay the money received by him to the Newfoundland Savings' Bank to a special account to be opened in

the matter of the winding-up of the said company. 2. Provided that, if the committee of inspection satisfy the Court that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator shall have an account with any other bank, the Court shall, on the application of the committee of inspection, authorize the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner. 3. If any such liquidator at any time retains for more than ten days a sum exceeding two hundred and fifty dollars, or such other amount as the Court in any particular case authorize him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty dollars per centum per annum, and shall be liable to disallowance of all or such part of his remuneration as to the Court shall seem just, and to be removed from his office by the Court, and shall be liable to pay any expenses occasioned by reason of his default. 4. No liquidator of a company which is being wound up by order of the Court shall pay any sums received by him as liquidator into his private banking account.

Imp. § 154.

**Powers of liquidator. 147.** The liquidator of a company which is being wound up by order of the Court may, with the sanction either of the Court or of the committee of inspection, employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself. The sanction aforesaid must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

Imp. §§ 151, 214.

**Power of official receiver to apply as to voluntary winding-up. 148.** Where a company is being wound up voluntarily or subject to the supervision of the Court, the official receiver may present a petition that the company be wound up by the Court, and thereupon, if the Court is satisfied that the voluntary winding-up or winding up subject to supervision can not be continued with due regard to the interests of the creditors or contributories, it may make an order that the company be wound up by the Court.

Imp., § 137.

**Information as to pending liquidations. 149.** 1. If the winding-up of a company is not concluded within one year after its commencement, the liquidator of the company shall, at such intervals as may be prescribed, until the winding-up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof, or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the liquidator or of the receiver. 2. If a liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding two hundred and fifty dollars for each day during which the default continues.

Imp. § 224.

**Audit of liquidator's accounts. 150.** 1. Every liquidator of a company which is being wound up by order of the Court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Court, or as the Court direct, an account of his receipts and payments as such liquidator. 2. The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by affidavit. 3. The Court shall cause the accounts so sent to be audited and for the purpose of the audit the liquidator shall furnish the Court with such vouchers and information as the Court may require, and the Court may at any time require the production of, and inspect any books or accounts kept by the liquidator. 4. When any such account has been audited, one copy thereof shall be filed with the Court, and each copy shall be open to the inspection of any creditor, or of any person interested. 5. The Court shall cause the account or a summary thereof



when audited, to be printed, and shall send a printed copy thereof by post to every creditor and contributory.

Imp. § 155.

**Books to be kept by liquidator. 151.** Every liquidator of a company which is being wound up by order of the Court shall keep, in manner prescribed, proper books in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory of the company may, subject to the control of the Court, personally or by his agent inspect, any such books.

Imp. § 156.

**Release of liquidators. 152.** 1. When the liquidator of a company which is being wound up by order of the Court has realized all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories between themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Court, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly. 2. Where the release of a liquidator is withheld the Court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default he may have done or made contrary to his duty. 3. Any order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact. 4. Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Imp. § 157.

**Discretionary powers of liquidator, and control thereof. 153.** 1. Subject to the provisions of this Act, the liquidator of a company which is being wound up by order of the Court shall, in the administration of the property of the company and in the distribution thereof amongst its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories at any general meeting, shall, in case of conflict be deemed to override any directions given by the committee of inspection. 2. The liquidator may from time to time summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be. 3. The liquidator may apply to the Court in manner prescribed in relation to any particular matter arising under the winding-up. 4. Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

Imp. § 158 (1—4).

**Appeal to Court against liquidator. 154.** If any person is aggrieved by any act or decision of the liquidator of a company, which is being wound up by order of the Court, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Imp. § 158 (5).

**Control of Court over liquidators. 155.** 1. The Court shall take cognizance of the conduct of liquidators of companies which are being wound up by order of the Court, and in the event of any such liquidator not faithfully performing his duties and duly observing all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or in the event of any complaint being made to the Court by any creditor or contributory in regard thereto, the

Court shall inquire into the matter and take such action thereon as may be deemed expedient. 2. The Court may at any time examine on oath the liquidator or any other person concerning the winding-up. 3. The Court may also direct a local investigation to be made of the books and vouchers of the liquidator of any company which is being wound up by order of the Court.

Imp. § 159.

#### *Ordinary powers of Court.*

**Judge may exercise powers of Court. 156.** The powers conferred by this Act upon the Court may, subject to review as hereinafter provided, be exercised by a single judge thereof; and such powers may be exercised in Chambers either during term or in vacation.

**Transfer of proceedings from one judge to another judge. 157.** The winding-up of a company or any proceedings therein may, at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one judge to another judge.

Imp. § 133.

**Appeal from judge to Court. 158.** Every judgment, finding, or order of a single judge, in Court or in Chambers, or of the Court constituted by two judges, in any proceeding under this Act, shall be respectively subject to be reviewed, varied, or set aside by the Court constituted of two or three judges, as the case may be, in the same manner as in other causes and matters under the provisions of *The Judicature Act, 1889*, and the amendments thereof.

**Collection and application of assets. 159.** As soon as may be after making an order for winding up the company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

Imp. § 163 (1).

**Provision as to representative contributories. 160.** In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others.

Imp. § 163 (2).

**Power of Court to require delivery of property. 161.** The Court may, at any time after making an order for winding up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

Imp. § 164.

**Power of Court to order payment of debts by contributory. 162.** The Court may at any time after making an order for winding up the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents to the company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this part of this Act; and it may, in making such order, when the company is not limited, allow to such contributory by way of set-off any moneys due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit. Provided that when all the creditors of any company whether limited or unlimited are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls.

Imp. § 165.

**Power of Court to make calls. 163.** The Court may at any time after making an order for winding up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories, for the time being settled on the list of contributories, to the extent of their liability for payment of all or any sums it deems



necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Imp. § 166.

**Power of Court to order payment into bank. 164.** The Court may order any contributory, purchaser or other person from whom money is due to the company, to pay the same into the Newfoundland Savings' Bank to the account of the liquidator instead of to the liquidator, and such order may be enforced in the same manner as if it had directed payment to the liquidator.

Imp. § 167.

**Regulation of account with Court. 165.** All moneys, bills, notes, and other securities paid and delivered into the Newfoundland Savings' Bank in the event of a company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out of the same as the Court may direct.

**Provision in case of representative contributory not paying moneys ordered. 166.** If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the estates of such deceased contributory, and of compelling payment, thereout, of the moneys due.

Imp. § 126 (3).

**Order conclusive evidence. 167.** Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever.

Imp. § 168.

**Court may exclude creditors not proving within certain time. 168.** The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Imp. § 169.

**Court to adjust rights of contributories. 169.** The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Imp. § 170.

**Court to order costs. 170.** The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding up any company in such order of priority as the Court thinks just.

Imp. § 171.

**Dissolution of company. 171.** When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

Imp. § 172 (1).

**Registrar to make minute of dissolution of company. 172.** Any order so made shall be reported by the liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company.

Imp. § 172 (2).

**Penalty on not reporting dissolution of company. 173.** If the liquidator makes default in reporting to the Registrar, in the case of a company being wound up by the Court, the order that the company be dissolved, he shall be liable to a penalty not exceeding twenty-five dollars for every day during which he is so in default.

Imp. § 172 (3).

#### *Extraordinary powers of Court.*

**Power of Court to summon persons before it, suspected of having property of company. 174.** The Court may, after it has made an order for winding up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to

be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate or effects of the company; and the Court may require any such officer or person to produce any books, papers, deeds, writings or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination; nevertheless, in cases where any person claims any lien on papers, deeds, or writings or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Imp. § 174 (1, 3, 4).

**Examination of parties by Court. 175.** The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid, concerning the affairs, dealings, estate or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Imp. § 174 (2).

**Power to arrest contributory about to abscond or to remove or conceal any of his property. 176.** The Court may, at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit this Colony, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods and chattels, to be seized, and him and them to be safely kept until such time as the Court may order.

Imp. § 176.

**Powers of Court cumulative. 177.** Any powers by this Act conferred on the Court shall be deemed to be an addition to and not in restriction of any other powers subsisting, of instituting proceeding against any contributory, or the estate of any contributory, or against any debtor of the company, for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

Imp. § 177.

**Power to enforce orders. 178.** All orders made by the Court under this Act may be enforced in the same manner in which orders of the Court may be enforced in any other proceeding therein.

Imp. § 178 (1).

**Evidence may be taken by commissioners. 179.** It shall be lawful for the Court or a judge thereof to refer the whole or any part of the examination of any witnesses under this Act to any person whom the Court or judge may appoint as commissioner, although such commissioner is out of the jurisdiction of the Court; and every such commissioner shall have in the matter so referred to him all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses as is granted to a commissioner in any other proceeding in the Court; and the examination so taken shall be returned or reported to the Court in such manner as it directs; and, subject to the provisions of this section, Order XXXIII, Rules 4 to 24, both inclusive, of *The Judicature Act, 1889*, shall apply to the taking of such examinations as fully as if the same were incorporated in this Act.

**Provision as to swearing of affidavits, etc. 180.** Any affidavit, affirmation, or declaration to be sworn or made, under the provisions or for the purposes of this Act, shall be sworn or made in the manner provided by Order XXXIV of *The Judicature Act, 1889*.

#### *Voluntary winding-up of companies.*

**Circumstances under which company may be wound up voluntarily. 181.** A company under this Act may be wound up voluntarily: 1. Whenever the period, if any fixed for the duration of the company by the articles of association, expires,



or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; 2. Whenever the company has passed a special resolution requiring the company to be wound up voluntarily; 3. Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company can not, by reason of its liabilities, continue its business, and that it is advisable to wind up the same. For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution, as hereinbefore defined.

Imp. § 182.

**Commencement of voluntary winding-up. 182.** A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up.

Imp. § 183.

**Effects of voluntary winding-up on status of company. 183.** Whenever a company is wound up voluntarily the company shall, from the date of the commencement of such winding-up, cease to carry on its business; except in so far as may be required for the beneficial winding-up thereof; and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding-up, shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.

Imp. § 184.

**Notice of resolution to wind up voluntarily. 184.** Notice of any special resolution or extraordinary resolution passed for winding up a company voluntarily shall be given by advertisement in the *Gazette*.

Imp. § 185.

**Consequences of voluntary winding-up. 185.** The following consequences shall ensue upon the voluntary winding-up of a company: 1. The property of the company shall be applied in satisfaction of its liabilities *pari passu* and, subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company; 2. Liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property; 3. The company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him; 4. If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him; 5. Upon the appointment of liquidators all the power of the directors shall cease except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers; 6. When several liquidators are appointed, every power hereby given may be exercised by such one or more of them, as may be determined at the time of their appointment, or in default of such determination by any number not less than two; 7. The liquidators may, without the sanction of the Court exercise all powers by this Act given to a liquidator appointed by the Court; 8. The liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories; 9. The liquidators may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same; 10. The liquidators shall pay the debts of the company and adjust the rights of the contributories amongst themselves.

Imp. § 186.

**Effect of winding-up on share capital of company limited by guarantee. 186.**

Where a company limited by guarantee and having a capital divided into shares, is being wound up voluntarily any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

**Power of company to delegate authority to appoint liquidators. 187.** A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised; and any act done by the creditors in pursuance of such delegated power shall have the same effect, as if it had been done by the company.

Imp. § 190.

**Arrangement when binding on creditors. 188.** Any arrangement entered into between a company about to<sup>1)</sup> wound up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is herein-after mentioned.

Imp. § 191 (1).

**Power of creditor or contributory to appeal. 189.** Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors, may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Imp. § 191 (2).

**Power for liquidators or contributories in voluntary winding-up to apply to court. 190.** Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the Court to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court; and the Court, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede wholly or partially to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

Imp. § 193.

**Power of liquidators to call general meeting. 191.** Where a company is being wound up voluntarily the liquidators may, from time to time, during the continuance of such winding-up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purposes they think fit; and in the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.

Imp. § 194.

**Power to fill up vacancy in liquidators. 192.** If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation, or otherwise, the company in general meeting, may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held, if held in manner prescribed by the regulations of the company,

<sup>1)</sup> *Sic*; obviously "be" should be inserted.



or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the Court.

Imp. § 189.

**Power of Court to appoint liquidators. 193.** If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator or liquidators; the Court may also, on due cause shown, remove any liquidator and appoint another liquidator to act in the manner of voluntary winding-up.

**Liquidators on conclusion of winding-up to make up an account. 194.** As soon as the affairs of the company are fully wound up the liquidators shall make up an account showing the manner in which such winding-up has been conducted and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators. The meeting shall be called by advertisement, specifying the time, place and object of such meeting; and such advertisement shall be published one month at least previously to the meeting in the *Gazette*.

Imp. § 195 (1, 2).

**Liquidators to report meeting to Registrar. 195.** The liquidators shall make a return to the Registrar of such meeting having been held and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return, the company shall be deemed to be dissolved. If the liquidators make default in making such return to the Registrar they shall incur a penalty not exceeding twenty-five dollars for every day during which such default continues.

Imp. § 195 (3—5).

**Costs of voluntary liquidation. 196.** All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

Imp. § 196.

**Saving of rights of creditors. 197.** The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the Court, if the court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Imp. § 197.

**Power of Court to adopt proceedings of voluntary winding-up. 198.** Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Imp. § 198.

*Winding up subject to the supervision of the Court.*

**Power of Court on application to direct winding-up subject to supervision. 199.** When a resolution has been passed by a company to wind up voluntarily the Court may make an order directing that the voluntary winding-up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others, to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.

Imp. § 199.

**Petition for winding-up subject to supervision. 200.** A petition, praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the Court, and which winding up is hereinafter referred to as a winding up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding-up the company by the Court.

Imp. § 200.

**Court may have regard to wishes of creditors. 201.** The Court may, in determining whether a company is to be wound up altogether by the Court, or subject to the supervision of the Court in the appointment of liquidator or liquidators, and in all other matters relating to the winding-up subject to supervision, have regard

to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. In the case of creditors regard shall be had to the value of the debts due to each creditor; and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company.

Imp. § 201.

**Power of Court to appoint additional liquidator in winding-up, subject to supervision.** 202. Where an order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company. The Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Imp. § 202.

**Effect of order of Court for winding-up, subject to supervision.** 203. Where an order is made for a winding-up subject to the supervision of the Court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all their powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily; but, save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of actions, suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

Imp. § 203.

**Appointment in certain cases of voluntary liquidators to be the liquidators.** 204. Where an order has been made for the winding-up of a company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the Court may in such last mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently and either with or without the addition of any other persons, to be the liquidators.

Imp. § 204.

*Supplemental provisions as to winding-up.*

**Dispositions after the commencement of the winding-up, avoided.** 205. Where any company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property, effects, and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company, made between the commencement of the winding-up and the order for winding-up shall, unless the Court otherwise orders, be void.

Imp. § 205.

**The books of the company to be evidence.** 206. Where any company is being wound up, all books, accounts, and documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Imp. § 220.

**Provision as to disposal of books, etc., of company.** 207. Where any company has been wound up under this Act and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of in the following way, that is to say, where the company has been wound up by or subject to the supervision of the Court, in such way as the Court directs, and where the company has been wound up voluntarily, in such way as the company by an extraordinary resolution directs, but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the company, or the liquidators, or any one to whom the custody of such books, accounts and documents has been



committed, by reason that the same or any of them, can not be made forthcoming to any party or parties claiming to be interested therein.

Imp. § 222.

**Inspection of books. 208.** Where an order has been made for winding up a company by the Court, or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

Imp. § 221.

**Power of assignee to sue. 209.** Any person to whom any thing in action belonging to the company is assigned, in pursuance of this Act, may bring or defend any action or suit relating to such thing in action in his own name.

**Set-off. 210.** Where there have been mutual credits, mutual debts, or other mutual dealings between a company for whose winding up an order has been made and any person proving or claiming to prove a debt under such winding-up order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party to the other, and the balance of the account and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a company in any case where he had given credit to the company, at any time after the date of the commencement of the winding-up of such company.

**Debts of all description to be proved. 211.** In the event of any company being wound up under this Act, all debts payable on a contingency, and all claims against the company present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

Imp. § 206.

**Rights of secured and unsecured creditors in the case of insolvent companies being wound up. 212.** Subject to the express provisions of this Act, in the winding-up of any company whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable and as to the valuation of annuities, and future and contingent liabilities respectively, as may be in force for the time being under the law of insolvency with respect to the estates of persons declared insolvent, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of such company may come in under the winding-up of such company, and make such claims against the same as they may respectively be entitled to.

**Priority of debts. 213.** [As amended by 6 Edw. 7, c. 6, § 8.] In the distribution of the assets of any company being wound up under this Act, the provisions of the *Judicature Act, 1904*, as regards the rights of the landlord or other persons to whom rent is due and as regards persons who are privileged creditors and persons who are preferential creditors, shall govern such distribution in respect thereof in the same manner as if the company being wound up were a person declared insolvent under the said *Judicature Act, 1904*.

**Priority of certain debts. 214.** In the winding-up of any company the debts mentioned in the preceding section shall, so far as the assets of the company available for payment of general creditors may be insufficient to meet them, have priority over the claims of holders of debentures or debenture stock under any floating charge created by such company, and shall be paid accordingly out of any property comprised in or subject to such charge.

Imp. § 209 (2) (b).

**Payment of debts out of assets in certain cases. 215.** In case a receiver is appointed on behalf of the holders of any debentures or debenture stock of a company secured by a floating charge, or in case possession is taken by or on behalf of such debenture holders of any property comprised in or subject to such charge, then, and in either of such cases, if the company is not at the time in course of being wound up, the

debts mentioned in section 213 of this Act shall be paid forthwith out of any assets coming to the hands of the receiver, or other person taking possession as aforesaid, in priority to any claim for principal or interest in respect of such debentures or debenture stock. And the periods of time mentioned in the said section shall be reckoned from the date of the appointment of the receiver, or possession being taken as aforesaid, as the case may be. But any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

**General scheme of liquidation may be sanctioned.** 216. The liquidators may, with the sanction of the Court where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, pay any classes of creditors in full after satisfying all claims under section 213 of this Act or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable.

Imp. § 214.

**Power to compromise.** 217. The liquidators may, with the sanction of the Court, where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company, where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding-up of the company, upon the receipt of such sums, payable at such times and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Imp. § 214.

**Power for liquidators to accept shares, etc., as a consideration for sale of property of company.** 218. Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale, shares, policies, or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any members of the company being wound up who has not voted in favour of the special resolution passed by the company, of which he is a member, at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing, addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer, that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution. No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed ante-



cedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if any order be made within a year for winding up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

Imp. § 192.

**Mode of determining price. 219.** The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration.

**Where compromise proposed, Court may order a meeting of creditors, etc., to decide as to same. 220.** Where any compromise or arrangement shall be proposed between a company which is, at the time of the passing of this Act or afterwards, in the course of being wound up, either voluntarily or by or under the supervision of the Court, under this Act, and the creditors of such company, or any class of such creditors, it shall be lawful for the Court in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct, and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company.

Imp. § 120.

**Certain attachments, etc., to be void. 221.** Where any company is being wound up by the Court or subject to the supervision of the Court, any attachment, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents.

Imp. § 211.

**Fraudulent preference. 222.** Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property, as would, if made or done by or against any individual trader, be deemed in the event of his insolvency to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed in the event of such company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such company and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding up a company shall in the case of a company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding up the company shall in the case of a voluntary winding-up, be deemed to correspond with a declaration of insolvency in the case of an individual trader; and any conveyance or assignment made by any company formed under this Act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

[223—226. Contain provisions relating to punishment of persons guilty of destruction or falsification of books and accounts, the prosecution of delinquent directors, and the penalties for perjury committed in relation to the winding-up of a company.]

Imp. §§ 216—218.

#### *Winding-up of associations under this Act.*

**Provision as to dissolution of associations. 227.** A registered association may be dissolved: 1. By an order to wind up the association, or a resolution for the winding-up thereof, made as is directed in regard to companies by this Act, the provisions whereof shall apply to any such order or resolution; or 2. By the consent of three-fourths of the members, testified by their signatures to an instrument of dissolution.

**Liability of members of a registered association in the event of its winding-up. 228.** When a registered association is wound up in pursuance of an order or resolution, the liability of a present or past member of the association to contribute for payment of the debts and liabilities of the association, the expenses of winding up, and the adjustment of the rights of contributories amongst themselves, shall be qualified as follows: 1. No individual, association, or company, who or which has ceased to be a member for one year or upwards prior to the commencement

of the winding-up, shall be liable to contribute; 2. No individual, association, or company shall be liable to contribute in respect of any debt or liability contracted after he or it ceased to be a member; 3. No individual, association, or company, not a member, shall be liable to contribute, unless it appears to the Court that the contributions of the existing members are insufficient to satisfy the just demands on the society; 4. No contribution shall be required from any individual, association, or company exceeding the amount, if any, unpaid on the shares in respect of which he or it is liable as a past or present member; 5. An individual, association, or company shall be taken to have ceased to be a member in respect of any withdrawable share withdrawn, from the date of the notice or application for withdrawal.

Imp. § 123 (1).

*Part V. Application of this Act to existing Companies and Associations, and other Matters.*

**Companies, etc., heretofore incorporated may be registered. 229.** [As amended by 63 Vic. 2d Sess. c. 3, § 2.] Every company, association, or society heretofore incorporated in pursuance of any Act of the Legislature and consisting of three or more members, and every company incorporated by a special Act of the Legislature and consisting of three or more members, may register itself under Part V. of *The Companies Act, 1899*, as a company limited by shares, a company limited by guarantee, as an association under section 3 of this Act, or as an unlimited company, as the case may be, and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

Imp. §§ 245—248.

**Procedure prior to application for registration of existing companies. 230.** The procedure for registering under Part V. of this Act any existing company shall be as follows: 1. The directors shall call a meeting of the shareholders of the company by sending to each shareholder through the post in a prepaid letter addressed to him at his registered place of abode seven days' notice at the least, specifying the place, the day, and the hour of meeting, and containing a copy of the resolution to be submitted to such meeting; 2. If the directors should desire to change the name of the company, or to limit or extend its objects, or to increase or reduce its capital, or to provide for a new allotment of shares, such resolution shall contain particulars of the proposed alterations; 3. In case it shall be resolved by a vote of not less than two-thirds in value of the shareholders present in person or by proxy at such meeting that the company be registered under this Act in manner specified, the directors shall apply to the Registrar to have the company so registered.

**Application for registration by existing company. 231.** When an existing company applies for registration under Part V. of this Act, there shall be delivered to the Registrar, the following documents, duly verified: 1. A list showing the names, addresses, and occupations of all persons who on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing in cases, where such shares are numbered, each share by its number; 2. The names of the directors of such company; 3. A copy of any Act of the Legislature, certificate, or other instrument constituting or regulating the company; 4. If the company is intended to be registered as a limited company, a statement specifying the following particulars, that is to say: The nominal capital of the company and the number of shares into which it is divided; The number of shares taken and the amount paid on each share; The name of the company, with the addition of the word "limited" as the last word thereof; With the addition, in the case of a company intended to be registered as a company limited by guarantee, of a resolution declaring the amount of the guarantee; 5. A memorandum of association, or a memorandum and articles of association, in the cases where the same are severally required under Part I. of this Act, and executed in the same manner and containing the same particulars as are necessary upon the first registration of a company; 6. A copy of the resolution passed at the meeting of the company referred to in the preceding section.

Imp. § 252.

**Power to existing companies to vary objects of company, etc., upon registration. 232.** 1. Where an existing company applies for registration as aforesaid, the memo-



random of association shall conform with the terms of the company, and may, if so authorized, extend, vary or limit the powers and objects of the old company; and the certificate of registration may be issued to the new company by the name of the old company, or by any other name on which the last word shall be the word "limited." 2. Where an existing company applies for registration as aforesaid, the capital of the company may be increased or decreased to any amount which may be fixed by the resolution of the company authorizing such registration. 3. The said resolution may prescribe the manner in which the shares or stock in the new company are to be allotted, and, in default of its so doing, the control of the allotment shall vest absolutely in the directors of the new company. 4. Whenever the Registrar considers that public notice of an intended application, as aforesaid, should be given, he may require such notice to be published in the *Gazette*, or otherwise as he thinks proper. 5. The Registrar may require further evidence of the existence of a company applying for registration as aforesaid.

**Certificate of registration of existing company. 233.** Upon compliance by an existing company with the aforesaid requisitions, the Registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this Act, and, in the case of a limited company, that it is limited, and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands.

Imp. § 259.

**Certificate to be evidence of compliance with Act. 234.** A certificate of incorporation given at any time to any company registered in pursuance of Part V. of this Act, shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorised to be registered under this Act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act.

Imp. § 17.

**Transfer of property to company. 235.** All such property, real and personal, including all interests and rights in, to, and out of property, real and personal, and including obligations and things in action, as may belong to or be vested in the company at the date of its registration under this Act, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Imp. § 260.

**Registration not to affect obligations previously incurred. 236.** The registration in pursuance of Part V. of this Act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of such company previously to such registration.

Imp. § 261.

**Continuation of existing actions. 237.** All such actions and other legal proceedings as may at the time of the registration of any company registered in pursuance of Part V. of this Act have been commenced by or against such company, or any officer or any member thereof may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of any individual member of such company upon any judgment, decree or order obtained in any action, suit or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree or order, an order may be obtained for winding up the company.

Imp. § 262.

**Registration of existing associations. 238.** 1. Every society or association, heretofore incorporated in pursuance of sections 39 to 41 of chapter 96 of the Consolidated Statutes (second series), or of any sections of any former Act of the Legislature dealing with the same subject matter, may register itself as an association under this Act, upon proving to the Governor in Council that it has been formed for any of the purposes specified in subsection (c) of section 8 of this Act, and obtaining the necessary license therefor. 2. The procedure for registering such existing association shall be similar to that provided in Part V. of this Act for the registration of existing companies; and the Registrar may, in addition to the license

aforesaid, the resolution of the association, and the memorandum and articles of association, require to be delivered to him all or any of the documents necessary to be delivered in the case of an application for the registration of an existing company. 3. Upon compliance by an existing association with the said requisitions to the satisfaction of the Registrar, the said association shall be registered with limited liability, and, upon registration, shall enjoy all the privileges and be subject to the obligations by this Act imposed upon limited companies, with the exceptions named in subsection (c) of section 8 of this Act, and the property of the old association shall vest in the new association in the same manner as the property of an old company is vested in a new company upon its registration.

Imp. §§ 245—248.

#### *Rules.*

**Rules. 239.** 1. The Court or other authority empowered by any Act of the Legislature to make rules of court, shall have power to make rules, and to alter and amend the same: a) For requiring or enabling all or any of the powers and duties conferred and imposed on the Court by sections 133, 159, 160, 161, 163 and 168 of this Act, to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court: Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection; b) Concerning the mode of proceeding to be had for winding up a company under this Act; c) For carrying into effect the objects of this Act. 2. Such rules shall be published in the *Gazette*, and thereupon shall have the same force as if hereby enacted. 3. Until such rules shall have been made and published as aforesaid, the general rules and orders observed by the Courts in England having jurisdiction in the matter of companies incorporated in England under the Companies Acts and in the winding-up thereof, shall be held to apply to companies incorporated under this Act and to their winding-up so far as the same are applicable.

#### *Alteration of forms.*

**Forms. 240.** The forms set forth in the second Schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer; the Court may, from time to time, make such alterations in the tables and forms contained in the first Schedule hereto (so that the amount of fees payable to the registrar in the said Schedule mentioned is not thereby increased) and in the forms in the second Schedule, or make such additions to the last-mentioned forms, as it deems requisite. Any such table or form, when altered, shall be published in the *Gazette*, and upon such publication being made such table or form shall have the same force as if it were included in the Schedule to this Act, but no alteration made by the Court in the table marked A, contained in the first Schedule shall affect any company registered prior to the date of such alteration, or shall repeal, as respects such company, any portion of such table.

Imp. § 118.

#### *Repeal.*

**Repeal. 241.** Chapter 96 of the Consolidated Statutes, (Second Series), entitled "Of the Incorporation, etc., of Trading and Manufacturing Companies, and of other Societies," is hereby repealed. Provided that no repeal hereby enacted shall affect: 1. Anything duly done under the said chapter; 2. The corporate existence of any company, society, or association registered under the said chapter; 3. Any right or privilege acquired, or liability incurred under the said chapter; 4. Any penalty, forfeiture, or other punishment incurred in respect of any offence against the said chapter; 5. Any conveyance, mortgage, or other deed which has been made in pursuance of the said chapter.

Imp. §§ 286—288.

**Compulsory registration. 242.** Every company incorporated under the said chapter hereby repealed, or under any preceding Act of the Legislature relating to the incorporation of companies shall register itself as a company under this Act, before the expiration of six months, from the passing of this Act. No fees shall be charged in respect of the registration of any company required to register by this section.



**Penalty on company not registering.** 243. If any company required by the preceding section to register under this Act makes default in complying with the provisions thereof, then from and after the date upon which such company is required to register under this Act until the day on which such company is registered under this Act, (which it is empowered to do at any time) the following consequences shall ensue, that is to say: 1. The company shall be incapable of suing, but shall not be incapable of being made a defendant to a suit; 2. No dividend shall be payable to any shareholder in such company; 3. Each director or manager of the company shall, for each day during which the company so being in default carries on business, incur a penalty not exceeding twenty-five dollars, and such penalty may be recovered by any person, whether a shareholder or not in the company, and be applied by him to his own use. Nevertheless, such default shall not render the company so being in default an illegal one, nor subject it to any penalty or disability other than as specified in this section.

### *Schedules.*

#### *First Schedule.*

##### *Table A. Regulations for management of a company limited by shares.*

(This Table is substantially identical with 25 & 26 Vic. c. 89, Sched. I., Table A., except: in § 2 and § 3 "twenty-five cents" is substituted for "one shilling;" in § 13 and § 14 "or in consequence of the marriage of any female member" is omitted; in § 22 "an affidavit" is substituted for "a statutory declaration in writing;" in § 29 "four months" is substituted for "six months;" in § 50 "twenty-four" is substituted for "seventy-two;" in § 91 "Court" is substituted for "Board of Trade.")

##### *Table B. Table of fees to be paid to the Registrar by a company having a capital divided into shares.*

(Fees are determined, in the case of a registration, by the amount of the nominal capital.)

##### *Table C. Table of fees to be paid to the Registrar by a company not having a capital divided into shares.*

(Fees are determined, in the case of a registration, by the number of members.)

#### *Second Schedule.*

(This Schedule is substantially identical with 25 & 26 Vic. c. 89, Sched. II., Forms A—E, except: in the articles of association in Form B., § 23, "twenty-four" is substituted for "forty-eight"; in Form E. a new item is inserted: "total amount, if any, agreed to be considered as paid..... shares \$ .....")

#### *Third Schedule.*

##### *Meetings of creditors and contributories.*

(This Schedule is substantially identical with 53 & 54 Vic. c. 63, Sched. I., except: in § 9 "and against whom a receiving order in bankruptcy has not been made" is omitted; in § 13 "or of a commissioner to administer oaths in the Supreme Court of Judicature in England" is omitted.)

### **b) 63 Vic. 2d Sess. c. 3. An Act to amend The Companies Act, 1899 (2d May, 1900).**

[1. Amends 62 & 63 Vic. c. 10, § 106, and is there incorporated.]

[2. Amends 62 & 63 Vic. c. 10, § 229, and is there incorporated.]

[3. Relates to non-trading companies.]

[4. Repeals 62 & 63 Vic. c. 10, § 8 (c), and § 65.]

**Construction.** 5. This Act shall be read with *The Companies Act, 1899*, and form part thereof as if incorporated therewith, and both Acts may be cited as *The Companies Act, 1899*.

**c) 6 Edw. 7, c. 6. An Act to amend The Companies Act, 1899  
(10th May, 1906).**

[1. Repeals 62 & 63 Vic. c. 10, § 8 (2).]

**Respecting the registration of mortgages and charges.** 2. 1. Every mortgage or charge created by a company after the commencement of this Act and being either: a) A mortgage or charge for the purpose of securing any issue of debentures; or b) A mortgage or charge on uncalled capital of the company; or c) A mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or d) A floating charge on the undertaking or property of the company; shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless filed with the Registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured. 2. Where the mortgage or charge comprises property outside the Colony, it shall, so far as that property is concerned, be sufficient compliance with the requirements of this section, if a deed purporting to specially charge such property be registered, notwithstanding that further proceedings may be necessary to make such mortgage or charge valid or effectual according to the law of the country in which such property is situate. 3. [As amended by 8 Edw. 7, c. 2, § 1.] The Registrar shall keep with respect to each company a register, in such form as shall be approved by the Minister of Justice, of all such mortgages and charges created by the company, after the commencement of this Act, and requiring registration under this section, and shall on payment of the fee of one dollar (\$ 1.00) enter in the register with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge. 4. Provided that, where a series of debentures containing any charge to the benefit of which the debenture holders of that series are entitled *pari passu*, is created by a company, it shall be sufficient to enter on the register: a) The total amount secured by the whole series; and b) The dates of the resolutions creating the series, and of the covering deed, if any, by which the security is created and defined; and c) A general description of the property charged; and d) The names of the trustees, if any, for the debenture holders. 5. Where more than one issue is made of debentures in the same series, the company may require the Registrar to enter on the register the date and amount of any particular issue; but an omission to do this shall not affect the validity of the debentures issued. 6. The Registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured (which certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with), and the company shall cause a copy of the certificate so given to be indorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the mortgage or charge so registered. 7. It shall be the duty of the company to register every mortgage or charge created by the company and requiring registration under this section, and for that purpose to supply the Registrar with the particulars required for registration; but any such mortgage or charge may be registered on the application of any person interested therein. 8. The register kept in pursuance of this section of the mortgages and charges of each company shall be open to inspection by any person on payment of the prescribed fee, not exceeding twenty-five cents for each inspection. 9. Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company and to be open to inspection by the members and creditors of the company on payment of such fee, not exceeding fifty cents for each inspection, as may be fixed by the regulations of the company, provided that in the case of a series of uniform debentures a copy of one such debenture shall be sufficient.

**Judge of Supreme Court may extend time for registration.** 3. A Judge of the Supreme Court on being satisfied that the omission to register a mortgage or charge



within the time required by this Act, or the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

**Memorandum of satisfaction may be entered on register.** 4. The Registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the company with a copy thereof.

**Index of mortgages.** 5. The Registrar shall keep a chronological index in the prescribed form and with the prescribed particulars to the mortgages or charges registered under this Act.

**Penalty for default.** 6. If any company makes default in complying with the requirements of this Act, as to registration of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorized or permitted such default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred dollars; and if any person knowingly and wilfully authorizes and permits the delivery of any debenture or certificate of debenture stock required by this Act to be registered without a copy of the certificate of the Registrar being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred dollars.

**Additional particulars in summary.** 7. 1. The summary mentioned in section 29 of the *Companies Act, 1899*, shall be so framed as to distinguish between the shares issued for cash and the shares issued otherwise than for cash, or only partly for cash, and shall, in addition to the particulars required by that section to be specified, also specify: a) The total amount of debt due from the company in respect of all mortgages and charges which require registration under this Act, or which would require such registration, if created, after the commencement of this Act; and b) The names and addresses of the persons who are the directors of the company at the date of the summary. 2. The list and summary mentioned in the said section 29 must be signed by the manager or by the secretary of the company.

[8. Amends 62 & 63 Vic. c. 10 § 213, and is there incorporated.]

**Respecting the winding-up of unregistered companies.** 9. Subject as hereinafter mentioned, any partnership, association, or company, consisting of more than three members, and not registered under the *Companies Act, 1899*, and hereinafter included under the term unregistered company, may be wound up under the *Companies Act, 1899*, and all the provisions of that Act and this Act with respect to winding up, shall apply to such company with the following exceptions and additions: 1. An unregistered company shall, for all the purposes of the winding-up of such company be deemed to have its registered office in that part of the Colony where its principal place of business is situate, and for such purposes, such principal place of business shall be its registered office. 2. No unregistered company shall be wound up under this Act voluntarily or subject to the supervision of the Court. 3. The circumstances under which an unregistered company may be wound up are as follows, that is to say: a) Whenever the company has dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs; b) Whenever the company is unable to pay its debts; c) Whenever the Court is of opinion that it is just and equitable that the company should be wound up. 4. An unregistered company shall for the purpose of this Act, be deemed to be unable to pay its debts: a) Whenever a creditor to whom the company is indebted, at law or in equity by assignment or otherwise, in a sum exceeding two hundred and fifty dollars, then due, has served on the company by leaving the same at the principal place of business of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to

secure or compound for the same to the satisfaction of the creditor; b) Whenever any action, suit, or other proceeding, has been instituted against any member of the company for any debt or demand due or claimed to be due from the company, or from him in his character of member of the company, and notice in writing of the institution of such action, suit, or other legal proceeding, having been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other legal proceeding, to be stayed, or indemnified the defendant to his reasonable satisfaction against such action, suit, or other legal proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same; c) Whenever execution or other process issued on a judgment or order obtained in the Court, in favour of any creditor, in any proceeding at law or in equity, instituted by such creditor against the company or any member thereof as such, or against any person authorized to be sued as a nominal defendant on behalf of the company, is returned unsatisfied; d) Whenever it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

**Contributions of an unregistered company. 10.** In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid; but in the event of the death or insolvency of any contributory, provisions contained in *The Companies Act, 1899*, with respect to the personal representatives of a deceased contributory, and to the trustee of an insolvent contributory, shall apply.

**Court may in certain cases restrain proceedings. 11.** The Court may at any time after the presentment of a petition for the winding up of an unregistered company, and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action, suit, or proceeding against any contributory of the company or against the company, as provided in section 127 of *The Companies Act, 1899*, upon such terms as the Court think fit.

**No suit to be commenced or continued after winding-up order. 12.** Where an order has been made for winding up an unregistered company in addition to the provisions contained in *The Companies Act, 1899*, in the case of companies formed under that Act, it is hereby further provided that no suit, action, or other legal proceeding, shall be commenced or proceeded with against any contributory of the company, in respect of any debt of the company except with the leave of the Court, and subject to such terms as the Court may impose.

**Court may order property of unregistered company to vest in liquidator. 13.** If any unregistered company has no power to sue or be sued in a common name, or if for any reason it appears expedient, the Court may by the order made for winding up such company, or by any subsequent order, direct that all such property, real and personal, including all interest, claims and rights into and out of property, real and personal, and including things in action, as may belong to or be vested in the company, or to or in any person or persons in trust for or on behalf of the company or any part of such property, is to vest in the liquidator or liquidators, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the liquidator or liquidators may, in his or their name or names and after giving such indemnity as the Court directs, bring or defend any actions, suits, or other legal proceedings relating to any property vested in him or them, or any actions, suits, or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the company and recovering the property thereof.

**Provisions of this Act additional to those of Companies Act. 14.** The provisions made by this Act with respect to unregistered companies shall be deemed to be



made in addition to and not in restriction of the provisions contained in *The Companies Act, 1899*, with respect to winding up companies by the Court, and the Court or liquidator may in addition to anything contained in this Act, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed under *The Companies Act, 1899*, but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under *The Companies Act, 1899*, and then only to the extent provided by this Act.

**d) 8 Edw. 7, c. 2. An Act to amend the Act 6 Edw. 7, c. 6 entitled An Act to amend the Companies Act, 1899 (18th February, 1908).**

[1. Amends 6 Edw. 7, c. 6, § 2 (3), and is there incorporated.]

### Sale of Goods.

**62 Vic. c. 2. An Act for codifying the Law relating to the Sale of Goods (8th June, 1899).**

#### *Summary.*

**Short title.** *Sale of Goods Act, 1899.* The Act is identical with the Imperial *Sale of Goods Act, 1893*, (56 & 57 Vic. c. 71), except as follows: 1. The numbering of §§ 1—39 corresponds with that of the Imperial Act; the numbering of §§ 40—57 is always one less than that of the corresponding section of the Imperial Act; §§ 58, 59, and 60, correspond respectively to §§ 61, 62, and 64 of the Imperial Act. 2. The following sections of the Imperial Act, most of which relate to Scotland, are not contained in the Newfoundland Act: § 4 (4); § 11 (2); § 21 (2); § 24 (3); § 26 (3); § 40; § 49 (3); § 53 (5); § 59; § 60; § 61 (3); § 61 (5); § 63. 3. The following sections are substituted for the corresponding sections of the Imperial Act: “22. Nothing in this Act shall affect: a) The provisions of any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof; b) The validity of any contract of sale under any special common law or statutory power of sale, or under the order of a court of competent jurisdiction.” “25. 3. In this section the term ‘mercantile agent’ means a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.” “59. 1. In this Act, unless the context or subject-matter otherwise requires: ‘action’ includes counterclaim and set-off; ‘buyer’ means a person who buys or agrees to buy goods; ‘contract of sale’ includes an agreement to sell as well as a sale; ‘delivery’ means voluntary transfer of possession from one person to another; ‘document of title to goods’ includes any bill of lading, dock warrant, warehousekeeper’s certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented; ‘fault’ means wrongful act or default; ‘future goods’ mean goods to be manufactured or acquired by the seller after the making of the contract of sale; ‘goods’ include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale; ‘property’ means the general property in goods, and not merely a special property; ‘quality of goods’ includes their state or condition; ‘sale’ includes a bargain and sale as well as a sale and delivery; ‘seller’ means a person who sells or agrees to sell goods; ‘specific goods’ mean goods identified and agreed upon at the time a contract of sale is made; ‘warranty’ means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the

breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated." 4. In §§ 3, 14, and 39 (1) of the Newfoundland Act the words "any other act" are substituted for "any statute;" and in §§ 18 (2), 19 (1), 20, 40 (2), 42 (1), 44 and 45 the words "or custodian" are omitted; in § 39 (1) the words "or right to retain them" are omitted, and in §§ 41, 42, 46 and 47 the words "or retention" and "or right of retention;" in §§ 42 (2) and 51 the words "or decree" are omitted; in § 4 "fifty dollars" is substituted for "ten pounds;" in § 11 (1) "in England and Ireland" is omitted; in § 12 (3) "was made" is substituted for "is made," and in § 26 "title of such goods" for "title to such goods;" in § 52 the sentence relating to Scotland is omitted; in § 58 (1) "the provisions of the law of insolvency" is substituted for "the rules of bankruptcy;" in § 59 (3) "been declared insolvent or not" is substituted for "committed an act of bankruptcy or not, and whether he has become a notour bankrupt or not;" in § 60 "1899" is substituted for "1893."

A verbal contract for the sale of goods valued at five hundred dollars, where there was no part delivery, actual or constructive, and nothing was given in earnest, is not enforceable. — *Martin v. Newfoundland Railroad Company*, (1884), 5 Morr. 4. Where there is a sale by sample the purchaser must be afforded an opportunity to examine the goods. — *Woods v. White*, (1860), 2 Morr. 458. The town of St. John's is a market overt. — *Baine, Johnston & Co. v. Chambers*, (1819), Tucker, 173; 1 Morr. 154. Where the purchase price depends upon the quantity and quality of the goods, the title does not pass until the quantity and quality have been determined, unless the contract discloses a different intention. — *Murray v. Goodridge*, (1893), 5 Morr. 760. Where no time of delivery is stipulated, but the purchaser has the right to reject such of the objects of the sale as do not meet a certain standard, provided he exercises this right within a specified time, but he fails to do so and accepts part delivery, the risk of loss as to the remainder of the goods is on the purchaser. — *Harvey & Co. v. Goodfellow & Co.*, (1895), 5 Morr. 834. The seller of goods to which a trade mark, mark, or trade description has been applied is deemed to warrant that the mark or description is a genuine trade mark or trade description, unless the contrary is expressed in some writing signed by or on behalf of the seller, and delivered at the time of the sale to and accepted by the buyer. — *Cons. St. 1892, c. 112, § 15.*

## Sea-Carriage of Goods.

### Cons. St. 1892, c. 100. Of the Liabilities of Carriers by Water.

**Interpretation.** 1. In this chapter, unless the context otherwise requires: a) The expression "goods" means and includes goods, wares, merchandise, and articles of any kind whatsoever; b) The expression "valuable securities" includes every document forming the title or evidence of the title to any property of any kind whatsoever.

**Duties and liabilities of carriers by water.** 2. 1. Carriers by water shall, at the times and in the manner and on the terms of which they have respectively given public notice, receive and convey, according to such notice, all persons applying for passage, and all goods offered for conveyance, unless in either case there is reasonable and sufficient cause for not doing so. 2. They shall be responsible not only for goods received on board their vessels, but also for goods delivered to them for conveyance by any such vessel, and they shall be bound to use due care and diligence in the safe keeping and punctual conveyance of such goods, subject to the provisions hereinafter made. 3. Carriers by water shall be liable for the loss of or damage to the personal baggage of passengers by their vessels; and the oath or affirmation of any such passenger shall be *prima facie* evidence of the loss of or damage to such articles and of their value: Provided that such liability shall not extend to any greater amount than two hundred dollars, or to the loss of or damage to any such valuable articles as are mentioned in subsection (c) following, unless the true nature and value of such articles so lost or damaged have been declared and entered, as provided by the said subsection (c). 4. They shall be liable for the loss of or damage to goods or personal baggage intrusted to them for conveyance as aforesaid, when caused by the fault or neglect of themselves, their agents, servants, or employees. 5. Provided that they shall not be liable to any extent whatsoever to make good any loss or damage happening without their actual fault or privity, or the fault or neglect of their agents, servants, or employees: a) To any goods or personal baggage on board any such vessel, or delivered to them for conveyance



therein, by reason of fire or the dangers of navigation; b) Arising from any defect in or from the nature of the goods themselves, or from armed robbery, or other irresistible force; c) To any gold, silver, diamonds, watches, jewels, or precious stones, money, or valuable securities, or articles of great value not being ordinary merchandise, by reason of any robbery, theft, embezzlement, removal or secreting thereof, unless the true nature and value thereof has, at the time of delivery for conveyance, been declared by the owner or shipper thereof to the carrier, or his agent or servant, and entered in the bill of lading or otherwise in writing.

The carrier may exempt himself from liability for loss of or damage to the goods transported, even where such loss or damage is occasioned by the negligence of himself or of his servants or agents. — *Fennell v. Montreal Steamship Co.*, (1876), 4 Morr. 124. *Seemle*, even where the negligence was gross. — *Southcott v. Montreal Steamship Co.*, (1881), 4 Morr. 273. Where goods arrive at their destination, and notice is given to the consignee of their arrival, and that the goods would be "at owner's risk" and expense while stored, the liability as carrier ceases. — *Anderson v. Reid*, (1900), M. & B. 372. A shipowner's liability ceases upon delivery of the goods at the usual wharf. Notice of arrival is not necessary. The consignee is bound to take the goods as they are passed out of the ship. — *Bennett & Co. v. Black Diamond Co.*, (1894), 5 Morr. 819. A stipulation that "in case the whole or any part of the goods specified herein be prevented from any cause from going in said steamer, the shipowners are only bound to forward them by the succeeding steamer of this line, and incur no further penalty, "does not justify the carrier in receiving for carriage such an excessive quantity of freight as to preclude themselves from the ability to transport the shipper's goods within a reasonable time. — *Gibb v. Allen*, (1883), 4 Morr. 499. As to the interpretation of an agreement to discharge cargo "where ordered, or as near thereto as she (the ship) may safely go," see *Pyman v. Newfoundland Railway Co.*, (1882), 4 Morr. 421. The carrier has a lien on the goods transported for the freight, but in the absence of a special contract to that effect he does not have a general lien in respect of other claims against the owner of the goods. — *Moore v. Reid*, (1900), M. & B. 367. Where goods are delivered to the consignee by a carrier who has transported them without a bill of lading, the consignee is not liable for the payment of the freight. — *Baine, Johnston & Co. v. Boyd*, (1899), M. & B. 286. The burden of proof that the injury to goods transported arose from the dangers of the sea is on the carrier. — *Harvey v. Ellie*, (1877), 4 Morr. 128. Stress of weather does not relieve a shipowner from liability for demurrage stipulated for in the charter party, unless the contract specifically excuses performance on that ground. — *Steer v. Phillip*, (1892), 5 Morr. 586. Nor does it excuse the charterer from liability for failure to load within the time specified. — *Job v. Boe*, (1900), M. & B. 405. A railway company may contract itself out of liability for the carriage of goods, even where the loss occurs through its negligence. — *Garland v. Reid Newfoundland Co.*, (1906).

## Bills of Exchange.

### Cons. St. 1892, c. 93. Of Bills of Exchange, Cheques, and Promissory Notes.

#### Summary.

The chapter is identical with the Imperial *Bills of Exchange Act*, 1882, (45 & 46 Vic. c. 61), except as follows:

1. §§ 1—74 correspond with §§ 2—75 of the Imperial Act; §§ 75—86 correspond with §§ 83—94 of the Imperial Act; § 87 corresponds with § 97 (2) of the Imperial Act. 2. The following sections of the Imperial Act are not reproduced in the Newfoundland Act §§ 1, 53 (2), 76—82, 95, 96, 97 (1, 3), 98—100. 3. In §§ 1, 8, 10, 28, 33, 36, 39, 42, 44—47, 49, 50, 52, 56, 71, 73, 81—87, of the Newfoundland Act "this chapter" is substituted for "this Act;" in § 1 "insolvent" is substituted for "bankrupt," and "insolvency" for "bankruptcy," "an" is omitted before "indorsement," and the following is added at the end of the section: "Colony" signifies Newfoundland and its dependencies;" in § 3 (1) "Colony" is substituted for "British Islands," and the sentence beginning with "for the purposes of this Act" is omitted; § 7 (4) reads as follows: "A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should<sup>1)</sup> be transferable;" § 13 reads as follows: "Where a bill is not payable on demand, the day on which it falls due is determined as follows: 1. Three days, called days of grace are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable

<sup>1)</sup> Obviously the word "not" should be inserted.

on the last day of grace; provided that (a) when the last day of grace falls on Sunday, Good Friday, Christmas Day, the Queen's<sup>1)</sup> Birthday, or the day appointed to be kept in its place, any day appointed by proclamation of the Governor as a public fast or thanksgiving day, or public holiday, New Year's<sup>2)</sup>, or the day after Christmas Day, and the day after New Year's Day, when these days fall on Sundays, the bill is payable and due on the succeeding business day. (b) 2. Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and including the day of payment. 3. Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance, if the bill be accepted and from the date of the noting or protest, if the bill be noted or protested for non-acceptance or for non-delivery. 4. The term 'month' in a bill means calendar month;" in § 16 (2) (a) "and signed" is substituted for "and be signed;" in § 19 (1) "stamped" and "the stamp will cover" are omitted; in § 20 (1) "when an acceptance" is substituted for "where an acceptance;" in § 21 (1) "as a drawer" is substituted for "as drawer," and "under law" for "under the law;" in § 22 (1) "or an assumed name" is substituted for "or assumed name," and "persons so liable" for "persons liable;" in § 25 (2) "or" is inserted<sup>3)</sup> before "by whose hand;" in § 29 (2) "force or fear" is substituted for "force and fear;" in § 31 (4) "thinks fit" is substituted for "think fit;" in § 34 (2) "expressly authorises" is substituted for "expressly authorise;" § 38 (4) reads as follows: "Where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawee<sup>4)</sup> or indorsers;" in § 40 (1) (d) "insolvent" is substituted for "bankrupt," and "or his assignee" is added at the end of the subsection; in § 40 (2) (a) "insolvent" is substituted for "bankrupt;" in § 43 (2) "the drawer or indorser" is substituted for "the drawer or an indorser;" in § 44 (3) "can be found there" is substituted for "can there be found;" in § 45 (1) "ceases to be operative" is substituted for "ceases to operate;" in § 49 (7) "notice<sup>5)</sup> given" is substituted for "notice is given;" in § 49 (10) "insolvent" is substituted for "bankrupt," and "or assignee" is added at the end of the subsection; in § 50 (5) "when the acceptor" is substituted for "where the acceptor," and "insolvent" for "bankrupt or insolvent;" § 50 (6) (b) reads as follows: "When a bill drawn payable at the place of business or residence of some person other than the drawer<sup>6)</sup> has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to or on<sup>7)</sup> demand on the drawee is necessary;" in § 50 (9) "circumstances" is substituted for "circumstance;" in § 51 (4) "when the holder" is substituted for "where the holder;" in § 52 "this subsection shall not extend to Scotland" is omitted; in § 53 (2) (b) "to a drawer's order" is substituted for "to drawer's order;" § 54 (2) (b) reads as follows: "Is precluded from denying to a holder in due course, the genuineness and regularity in all respects of the drawee's<sup>8)</sup> signature, and all previous indorsements;" in § 56 (1) (c) "expense of protest" is substituted for "expenses of protest;" in § 58 (1) "thereof if in good faith" is substituted for "thereof in good faith;" in § 62 (3) "but when a bill" is substituted for "but where a bill;" in § 63 (1) "when a bill" is substituted for "where a bill;" in § 64 (5) "when a bill" is substituted for "where a bill;" in § 65 (1) "by accepting engages" is substituted for "by accepting it engages;" in § 66 (2) "and when the address" is substituted for "and where the address;" in § 66 (3) "circumstances" is substituted for "circumstance;" in § 66 (4) "by an acceptor" is substituted for "by the acceptor;" in § 68 "refuse to give" is substituted for "refuses to give;" in § 70 (2) "when the holder" is substituted for "where the holder;" in § 70 (3) "as between the holders" is substituted for "as between such holders;" in § 70 (5) "the part at maturity" is substituted for "that part at maturity;" in § 70 (6) "when any one part" is substituted for "where any

<sup>1)</sup> The word "Queen" means the reigning sovereign. — Cons. St. 1892, c. 1, § 6. — <sup>2)</sup> To the public holidays here enumerated must be added Empire Day. — See *infra*. — <sup>3)</sup> This word should obviously be omitted. — <sup>4)</sup> *Sic*; obviously "drawer." — <sup>5)</sup> Obviously "is" should be inserted. — <sup>6)</sup> *Sic*; obviously "drawee." — <sup>7)</sup> Obviously "on" should be omitted. — <sup>8)</sup> *Sic*; obviously "drawer's."



one part;" in § 71 throughout "this Colony" is substituted for "the United Kingdom;" in § 71 (2) "when an inland bill is indorsed out of this Colony" is substituted for "where an inland bill is indorsed in a foreign country;" in § 73 (3) "damage" is substituted for "discharge;" in § 75 (= Imp. § 83) "this Colony" is substituted for "the British Islands;" § 84 reads as follows: "When by this chapter the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. 'Non-business days,' for the purposes of this chapter, mean Sunday, Good Friday, Christmas Day, New Year's Day, the Queen's<sup>1)</sup> Birthday, or the day appointed to be kept in its place; a day appointed by proclamation as a public fast, thanksgiving day, or public holiday, the day after Christmas and New Year's Day when these days fall on a Sunday<sup>2)</sup>. Any other day is a business day;" in § 86 (= Imp. § 94) "the form of protest given in the Schedule to this chapter" is substituted for "the form given in Schedule 1 to this Act;" § 87 = Imp. § 97 (2). The Schedule containing the form of protest is substantially identical with the form contained in Schedule 1 of the Imperial Act.

It was once held that the Imperial Act 1 & 2 Geo. 4, c. 78, requiring acceptance of inland bills to be in writing applied in Newfoundland. — *Moore v. Beake*, (1858), 2 Morr. 231. The holder of a dishonoured bill may treat it as a nullity and sue on the common counts. — *Sparrow v. Boutin*, (1857), 2 Morr. 172. Provided the instrument is under his control, and not in the hands of any other party entitled to sue upon it. — *Fowler v. Malada*, (1881), 4 Morr. 263. The acceptance of a bill of exchange in payment of a debt is not a discharge of the debt, unless the bill is subsequently paid, unless the agreement of the parties evidences an intention to accept the bill in lieu of cash. — *March v. Thorburn* (1888), 5 Morr. 357. It was held in an early case that keeping a bill of exchange for ten months is evidence of lack of due diligence. — *Brine v. Meehan*, (1817), Tucker, 1. But in the same case it was later held that a custom in the Colony for parties to retain bills of exchange for an indefinite period, without prejudice to the right of recovery, was reasonable, and should be sustained. — *Meehan v. Brine*, (1817), Tucker, 5; 1 Morr. 5. Provided that it did not exceed the period allowed for the bringing of suit under the Statute of Limitations. — *Hayes v. Neave*, (1821), Tucker, 290; 1 Morr. 259. The rule of notice of dishonour by non-acceptance does not apply as between the original parties to the instrument. — *Sparrow v. Boutin*, (1857) 2 Morr. 172. The notorious insolvency of the makers of a promissory note is no excuse for non-presentment for payment. But presentment may be waived by an indorser, and a distinct promise by the indorser to pay the amount of the bill or note, made with knowledge of the fact that due presentment to the acceptor or maker was not made, operates as a waiver. — *Newfoundland Savings Bank v. McPherson*, (1860), 2 Morr. 462. The right of a holder of a bill drawn under an open letter of credit can not be affected by a private agreement not expressed in the letter, and of which he had no notice, between the person issuing the letter of credit and the holder thereof limiting the use of the letter. — *Merchants Bank of Halifax v. Winter*, (1898), M. & B. 30. The effect of a bank's initialling a cheque drawn upon it is to certify that the drawer has funds on deposit sufficient to meet such cheque. A bank receiving a certified cheque on deposit, and crediting the depositor with the amount thereof, does not thereby guarantee its payment by the bank certifying the cheque; it acts merely as an agent of the depositor for the purpose of collection. — *Gaden v. Newfoundland Savings Bank*, (1898), M. & B. 46. The custom of banks in Newfoundland is to regard post-dated cheques as bills of exchange payable on the date they bear.

## Bank Holidays.

### a) Cons. St. 1892, c. 95. Of Banks and Banking.

### b) 3 Edw. 7, c. 5. An Act respecting Empire Day (20th May, 1903).

#### Summary.

The following days are declared bank holidays: Sunday, New Year's Day, Good Friday, Christmas Day, Empire Day (24th May), the day after New Year's Day, the day after Christmas Day, and the 25th May, when New Year's Day, Christmas Day, or Empire Day fall on a Sunday, and any day appointed by proclamation of the Governor for a public holiday or for a fast or thanksgiving day in the Colony.

<sup>1)</sup> Including Her Majesty's successors. — Cons. St. 1892, c. 1, § 6. — <sup>2)</sup> To the public holidays here enumerated must be added Empire Day. — See *infra*.

## Insolvency.

### a) Cons. St. 1892, c. 83. Of Insolvency.<sup>1)</sup>

### b) 4 Edw. 7, c. 3. An Act respecting the Supreme Court (28th April, 1904).

#### *Summary.*

##### *Petition and hearing.*

**213—221.** Petitions directed to the Supreme Court or a Judge thereof, or a declaration in insolvency may be filed by the debtor, or by any creditor. The petition must be accompanied by a schedule of assets and liabilities of the debtor, and both petition and schedule must be verified by affidavit. Where the application is made in St. John's, notice of the time and place of hearing must be published in the *Royal Gazette* and one other newspaper. If made elsewhere the Court determines the manner of giving notice. With the consent of the petitioner, the hearing may be adjourned from time to time, but except in cases of liquidation or composition a creditor's petition may not be withdrawn or proceedings thereon be stayed, if any creditor object thereto, and it appear to the Court that the debtor is insolvent. The Court may direct the examination of witnesses before an examiner at any place. The Court may declare the debtor insolvent, may discharge him from custody where his imprisonment was for non-payment of money, may exonerate his bail, and upon the delivery of property attached, or payment of its value into court, may discharge the sureties therefor from further liability on their bonds. Discharge from custody may be conditioned upon performance of such acts as the Court may deem expedient.

Con. St. 1892, c. 83, §§ 1—7, 9, 16. The debtor petitioning to be declared insolvent must show to the satisfaction of the Judge that he is insolvent. — *In re Morison*, (1860), 2 Morr. 522. Parties to a deed under which the property of an individual is conveyed to trustees for the benefit of creditors are precluded from setting up such deed as an act of insolvency. — *Ex parte Brooking*, *In re Little*, (1818), Tucker, 118; 1 Morr. 101. Opinions of counsel to the effect that the title of property mortgaged to secure the payment of a debt is defective is not sufficient to sustain a charge of misrepresentation of title, and do not warrant the mortgagees in treating the deed as a nullity, and claiming the debt secured by it as one recoverable in *praesenti*. — *In re Joy*, (1886), 5 Morr. 126.

##### *Trustees.*

**222—228.** The Court may vest the estate of the alleged insolvent in a trustee or trustees, to receive the same and hold it subject to order, and in the event of a declaration of insolvency, to invest, realize, and distribute the same. Trustees may sue in their own names in actions for the benefit of the insolvent estate. Trustees or assignees under a conveyance or assignment for the benefit of creditors are subject to the same provisions of law as trustees appointed by the Court. A trustee may disclaim leasehold interests and tenancies by notice in writing to the landlord, the estate remaining liable for the rent from the time of the appointment of the trustee until such notice shall have expired. The working tools and implements of trade of the debtor, his fishing skiff or punt, and the necessary cooking utensils, bedding and wearing apparel of himself and family do not vest in the trustee. At the instance of a majority in number and value of the creditors a trustee may be changed or removed, and another person recommended by such creditors appointed, or the Court may remove a trustee or require him to find sureties for the proper discharge of his duties. The trustees are entitled to reimbursement for actual and reasonable expenses incurred, and to a compensation not exceeding five per cent. on the realized value of the assets of the estate. Upon the realization of all of the assets and the distribution of the final dividends, or upon the termination of the trusteeship for any other reason, the trustee upon the filing and approval of the final account, and the fulfilment of all duties upon him is entitled to his discharge; but a discharge obtained by fraud may be revoked.

<sup>1)</sup> Substantially re-enacted in, but not expressly repealed by, 4 Edw. 7, c. 3. The numbering of the sections as here given is that of the latter Act. The corresponding sections of the Act consolidated in 1892 are given in the notes.



Cons. St. 1892, c. 83, §§ 12—15. As to administration of property, see *Trustees v. Huie*, (1817), Tucker, 18, 26; 1 Morr. 16. As to trustees' right to disclaim lease to the bankrupt, see *Little v. Trustees*, (1817), Tucker, 35; 1 Morr. 29. Where there are two leases of the same property, they may disclaim one and hold the other. — *Ex parte Haly*, In re Johnston, (1818), Tucker, 143; 1 Morr. 125. Where goods of the debtor have been seized by the sheriff under a writ of fieri facias in satisfaction of a judgment, but not sold before the date of the vesting order they do not pass to the trustee. — *MacPherson v. Carroll*, (1908). A trustee can not make a profit out of the estate other than that allowed by the Court. — In re Duder, (1904).

#### *Duties and discharge of debtor.*

**229—231.** It is the duty of the debtor to make a full disclosure and delivery of his property, to conform to the orders of the court, and to assist in the collection of the assets. Wilful failure to do so renders him liable for contempt of court, and precludes him from receiving his discharge. By and with the consent of a majority in number and value of the creditors, or upon the application of the insolvent, the insolvent may be granted a certificate of discharge, provided he has performed his duties and has not been guilty of any of the acts set forth below in sections 266 and 267. Such certificate is a release of any judgment recovered and a bar to any subsequent suit brought for any debt or liability due or owing at the time of his being declared insolvent, or becoming due under any contract previously entered into. But a certificate of insolvency does not release from any debt or liability incurred by means of the debtor's fraud or fraudulent breach of trust, nor whereon he has obtained forbearance by any fraud to which he was a party, nor from rent becoming due after the declaration of insolvency under a tenancy originating previously and continued by the insolvent subsequently to the declaration of insolvency.

Cons. St. 1892, c. 83, §§ 21—23. At the hearing of the application for the certificate of insolvency creditors may bring forward objections which might have been urged on the original application for insolvency. — In re Bulley, Mitchell & Co., (1859), 2 Morr. 401. Where the objection against the granting of a certificate of insolvency is that the insolvent contracted "debts without a reasonable or probable expectation of paying them," it is necessary to show that the debts were fraudulently contracted without hope of being able to pay them. — In re John Hogsett, (1861), 2 Morr. 527.

#### *Proof of debts.*

**232—238.** Proof of debts must be made as soon as possible after the declaration of insolvency, and is effected by an affidavit containing or referring to a statement of account or by an account sworn to before a commissioner. Claims by or against an insolvent may be referred to a master for report. Secured creditors are entitled to dividends on their claims, after deducting the value of the security, or in respect of their entire claim, if they give up their security. When any rent or other payment falls due at stated periods, and the declaration of insolvency is ordered at any other than one of such periods, the person entitled may prove for a proportionate part thereof up to the declaration of insolvency as if such rent or payment grew from day to day. The landlord or other person to whom any rent is due from the debtor at any time before or after the appointment of the trustee may distrain upon the goods of the debtor for the rent due. But if such distress be levied after the appointment of the trustee, or after an arrangement has been acted upon by the Court, or if the distress be levied before such appointment or arrangement and the goods distrained lawfully sold under the distress at the time of such appointment or arrangement, the distress is available in case of declaration of insolvency or in case of an arrangement acted upon as aforesaid, for one year's rent accrued due prior to the date of such appointment or arrangement. But the balance, if any, is provable as an ordinary debt. Where there have been mutual credits or other mutual dealings between the debtor and any person who is or claims to be a creditor an account must be taken of what is due from the one party to the other in respect of such mutual dealings, and the balance of the account may be claimed or paid on either side respectively. But a creditor is not entitled to claim the benefit of any set-off against the debtor where at the time of giving credit to the debtor he had notice of the insolvency.

Cons. St. 1892, c. 83, §§ 18, 19, 38, 53, 54, 57. A distress may be made by seizing one article in the name of the whole, provided that the latter be in the power of the distrainer. — In re Meehan, (1879) 3 Morr. 172. The relation of banker and customer ceases on the happening of insolvency, and thereafter the bank is not entitled to charge compound interest against the estate of the insolvent. — *Trustees, etc. v. Receivers of the Union Bank*, (1898), M. & B. 116. As to set-off, see *Taylor v. Trustees Commercial Bank*, (1897), M. & B. 6.

*Claims of fishery servants.*

**239.** When it shall be made to appear that the hirer or employer of any seaman, fisherman, or other servant is insolvent, or unable to pay his creditors one hundred cents in the dollar, such seaman, fisherman, or other servant actually employed in the catching, curing, or making of fish or oil, and such person as shall have supplied bait to the hirer or employer aforesaid, and who shall be creditors for wages, shares, or bait money for the current season, shall upon all such fish and oil taken, cured or made by the hirer or employer aforesaid, or out of the produce or value thereof, if the same be in the possession of the hirer or employer, or of any other person aware of or privy to the hiring or employing of any such seaman, fisherman, or other servant whether the same be accruing or due at or before the time of such other person receiving such fish or oil or the produce or value thereof, or before paying the hirer or employer for the same, be considered privileged creditors, and shall first be paid one hundred cents in the dollar, so far as such fish or oil, or the produce or value thereof, shall go.

Cons. St. 1892, c. 83, § 24. The custom of giving fishery servants the first claim on the voyage has existed in the Colony since the fishery began. — Prowse, *History of Newfoundland*, p. 435. The Act of Parliament of 1775 gave seamen and fishermen a preferential claim on the fish and oil taken. — 15 Geo. 3, c. 31, 16. A similar preference, limited to the wages of the current season, was given by the Act of 1809. — 49 Geo. 3, c. 27. *Cp. Brehaut v. Le Messurier's Estate*, (1823), Tucker, 414; 1 Morr. 361; *Benning & Holohan v. Brown, Hoyles & Co.*, (1820), Tucker, 225; 1 Morr. 199. Passage money can not rank as wages unless it has been expressly agreed that it should form part of the hire. — *In re Cook's Insolvency*, (1820), Tucker, 245; 1 Morr. 218. It was held under the Act 19 Vic. c. 14, that fishery servants in the case of liver of cod purchased and manufactured were only entitled to claim upon the net proceeds of the liver after its manufacture into oil, after deducting the cost paid for the liver. — *In re Kavanagh v. Dallord*, (1862), 2 Morr. 704. There is no liability on a trustee for the wages of a servant for any time after his agreement has expired, even though he has been improperly kept out of his wages. — *In re Kavanagh*, (1862), 2 Morr. 708. The servant of the supplier of bait is not entitled to a preferential claim for his wages out of the estate of the person to whom the bait was supplied. — *McGrath v. Kavanagh*, (1861), 2 Morr. 565.

**240.** Where such fish and oil shall be insufficient for the full payment of the wages or shares of all such seamen, fishermen, or other servants, or of the persons who shall supply bait as aforesaid, they shall be paid their claims rateably in proportion to their respective wages, shares, or bait money, and may claim for any balances upon the insolvent estate in such manner as they may be respectively entitled under the provisions of this part of the Act.

Cons. St. 1892, c. 83, § 25.

**241.** In case the receiver be the supplying merchant, no seaman, fisherman or other servant engaged without his knowledge and consent shall be privileged creditors under the two next preceding sections.

Cons. St. 1892, c. 83, § 26. A fishery servant is entitled to follow the voyage to obtain his wages into the hands of any person receiving such voyage with notice of the claim. — *In re Hennessey*, (1898), M. & B. 20. Where servants are hired on the premises of the merchant this fact is evidence of privity of knowledge by the merchant. In this case there were also other facts showing notice on the part of the supplier. — *Antle v. Baine, Johnston & Co.*, (1885), 5 Morr. 99.

**242.** Any person who may be bona fide engaged or shipped in the place of any such seaman, fisherman, or other servant who may during the voyage have been discharged, or have left, or deserted, or have died, or have been incapacitated by illness or other cause from continuing his service, shall be a privileged creditor in manner aforesaid, and shall be entitled to claim on the supplying merchant, being such receiver, for the period he may have served in such stead.

Cons. St. 1892, c. 83, § 27.

**243.** Any defence which the hirer or employer could have made if the action had been taken against him by such seaman, fisherman, or other servant or supplier of bait, for such wages, share or bait money, shall be equally available for the receiver to make on the trial of any action brought against him by such seaman, fisherman, or other servant or supplier of bait, for such wages, share, or bait money, or the value of such fish and oil or any part thereof as aforesaid: Provided that the receiver of the voyage or any part of the produce or value of same, shall not be liable for the payment of the wages or share of such seaman, fisherman, or other servant or supplier of bait, or any part thereof, unless it be proven on the trial that such receiver is liable under the provisions of this part of the Act: Provided that any shareman selling or lawfully disposing of his share of fish or oil, or any part



thereof, may sue and recover payment for same from the purchaser thereof, according to the terms of his contract, and any shareman, fisherman, or other servant may sue for and recover his wages or share from his hirer or employer notwithstanding the provisions of this part of the Act.

Cons. St. 1892, c. 83, § 28.

**244.** To enable such seaman, fisherman, or servant or person supplying bait as aforesaid, to recover the amount of his wages, share or bait money from the receiver of such fish and oil, or the produce or the value thereof, or to make a claim against the insolvent estate of such receiver, it shall not be necessary that the hirer or employer should have been formally declared insolvent; but it will be sufficient if it be made to appear on the trial of any action or the hearing of any reference that the share, wages, of bait money was due at the time of bringing such action, and that the said hirer or employer was then insolvent or unable to pay his creditors one hundred cents in the dollar.

Cons. St. 1892, c. 83, § 29. Under 19 Vic. c. 14 formal declaration of insolvency of the employer was unnecessary. — *In re Boutin*, (1860), 2 Morr. 519.

**245.** If such seaman, fisherman, or other servant or supplier of bait has knowingly or wilfully colluded with or assisted the hirer or employer in disposing of his voyage otherwise than to his supplying merchant, such supplying merchant not being paid to the extent of his supplies over and above the unpaid wages or bait money at the time of the action being brought, such seaman, fisherman, or other servant or supplier of bait, shall not be entitled to recover in any action brought against any receiver being a supplying merchant.

Cons. St. 1892, c. 83, § 30.

**246.** Nothing herein contained shall prevent such seaman, fisherman or other servant from recovering such share or wages from any person other than the supplying merchant who may have received such voyage or any part thereof, and who would be otherwise liable under this part of the Act.

Cons. St. 1892, c. 83, § 31.

**247.** Sealers who have put in or sold their shares of seals' pelts, skins, or oil to the owners or outfitters of sealing ships, shall, in like manner with servants, under section 239, be privileged creditors upon the estates of such owners or outfitters in the event of their insolvency. Sealers who have sold their shares of seals' pelts, skins, or oil to a vendee other than the owners or outfitters, aforesaid, shall rank in like manner upon the estate of such vendee in the event of his insolvency. In the cases provided for by this section, the seals' pelts, skins, or oil must have been delivered to the owner, outfitter, or other vendee, within six months prior to the declaration of insolvency. Nothing in this section contained, shall entitle sealers to claim for their share of seals' pelts, skins, or oil, to which, according to the terms of their agreement, they may have forfeited their right; and in such case the persons entitled to their forfeiture shall be entitled to the claim as aforesaid in their stead. Nothing in this section contained shall be construed to affect any custom as to set-off against the shares of seals' pelts, skins, or oil, of hirers' or employers' accounts.

Cons. St. 1892, c. 83, § 32.

#### *Distribution of estate.*

**248—251.** Insolvent estates are distributed rateably, after the payment of the costs and expenses of the insolvency, among the creditors, subject, however, to the preferential claims of the following classes of creditors, in the order named: 1. Clerks, servants, labourers, and workmen in respect of wages earned by them at time within one year prior to the appointment of a trustee, and fishery servants and seamen, under the circumstances mentioned in the preceding paragraphs. Persons wrongfully dismissed from service who would have been entitled to claim as belonging to this preferred class may prove their claim and become entitled to preference. 2. The Crown, the Government, and the Newfoundland Savings Bank. 3. Creditors for supplies necessarily and bona fide furnished for the prosecution of the fishery during the current season.

Cons. St. 1892, c. 83, §§ 33—35. Rent received by a general merchant as agent of the landlord, unless specifically set apart, is not entitled to priority as a trust fund. — *Newman v. Trustees of Tremlett*, (1818), Tucker, 138; 1 Morr. 121. But claims intrusted to a banker for collection, and to pay the same over, are such a trust fund. — *Trustees of Union Bank v. Trustees of Commercial Bank*, (1896), 5 Morr. 879; *London & Westminster Bank v. Trustees of Commercial Bank*, (1897), M. & B. 8. The rules of a mutual marine insurance club providing that the club shall have a lien on each vessel insured for the proportion of the losses of the year do not create a charge

on the vessel in the nature of an equitable mortgage, and the contributions due by the owner of the vessel in respect of his share of the losses are not entitled to preference on this ground. — *In re Tucker, Ex parte Marine Insurance Club*, (1886), 5 Morr. 123. Where mortgaged premises are destroyed by fire after the insolvency of the mortgagor, the mortgagee can claim on the general fund for the amount. — *Ex parte Little, In re Dooling & Kelley*, (1817), *Tucker*, 51; 1 Morr. 45. As to right of the wife to recover from the insolvent estate of her husband the rents and other income of her separate property collected by her husband from time to time and appropriated to his business, with his wife's knowledge, see *In re Harvey*, (1890), 5 Morr. 442. For a case where the circumstances were held not to create a trust, see *Hann v. Rendell*, (1902), *M. & B.* 523.

#### *Fraudulent assignments.*

**252.** Every charge, mortgage, conveyance, grant, or assignment of the property or effects of any insolvent, or of any part thereof, and every gift, delivery, or transfer of any of his goods or chattels, and every payment made by him in money, or otherwise, and every cognovit, warrant of attorney, judgment, or other security whatsoever, paid, made, or given by any insolvent within two months prior to the filing of any petition praying for a declaration of his insolvency or for the distribution of his estate, and with a view to give an undue preference to any creditor is null and void in case the person taking or receiving the same, or for whose benefit the same was taken or received, had notice of the insolvency. But such transfers are not invalidated where the property has subsequently come into the hands of a bona fide purchaser. In such case the original assignee or transferee is liable to account for the value to the trustee of the insolvent estate.

*Cons. St.* 1892, c. 83, § 11. A preference given in contemplation of insolvency is not void if given in pursuance of a previous agreement so to do. — *Trustees of Dalton & Ryan v. Attwood & Haynes*, (1818), *Tucker*, 81; 1 Morr. 67. For cases where under the circumstances the preference was declared not to be fraudulent, see *In re Saint*, (1883), 4 Morr. 477; *Hunt v. Hearn*, (1892), 5 Morr. 615. See further as to deeds of assignment, and the rights of creditors thereunder, *Thomas v. Tasker & Bruce*, (1858), 2 Morr. 197; *Seaton v. Prowse*, (1856), 2 Morr. 112. As to fraudulent assignments in the case of limited partnerships, see *Cons. St.* 1892, c. 98, §§ 20—22.

#### *Dividends.*

**253—255.** In determining the amount of a dividend the trustee must make provision for debts appearing to be due to creditors resident at such distance that in the ordinary course of communication they have not had time to establish their claims, and also for claims tendered but not yet determined. Creditors failing to prove before the declaration of dividends are entitled after proof and acceptance of their claim to a dividend out of any moneys for the time being in the hands of the trustee, but can not disturb the distribution of dividends declared before proof of their debts. When all of the property of the insolvent is realized a final dividend is declared, but before declaring such final dividend creditors whose claims have not been established must be given an opportunity to establish the same.

*Cons. St.* 1892, c. 83, §§ 55, 56. For a case where under the direction of the court, after payment of a dividend, the surplus of the estate was remitted to England to be invested in public securities to abide an appeal pending in the Privy Council, see *In re Dooling & Kelly*, (1818), *Tucker*, 127; 1 Morr. 109.

#### *Estates of deceased persons.*

**256.** Where the estate of a deceased person is not sufficient to pay his just debts a trustee may be appointed on the petition of the executor or administrator, or of a creditor of the deceased. The administration of the estate is subject to the rules relating to an insolvent estate.

*Cons. St.* 1892, c. 83, § 37. As to the rights of the holder of an equitable mortgage, and the application of the Registry Act, see *In re Estate John Boone*, (1887), 5 Morr. 196.

#### *Arrangements.*

**257—264.** At any time after a petition has been filed and before the estate has been distributed the Court or Judge may, on proof that either before or since the filing of such petition an arrangement by liquidation or for a composition has been entered into by the debtor and two-thirds in number and value of the creditors resident or having houses of business in Newfoundland, and two-thirds of his creditors elsewhere, or of three-fourths of the whole of such creditors in number and value, make an order dissolving the proceedings in insolvency or staying such proceedings, and the release of the estate either altogether or for a limited time on such terms and subject to such conditions as the Court or Judge may think fit, or may from



time to time determine. In calculating the two-thirds or three-fourths, as the case may be, in number and value of the creditors, creditors whose claims do not exceed twenty dollars shall be reckoned in value and not in number. Preferential creditors may not be counted at all unless they have consented to rank as ordinary creditors. In case of the composition or arrangement the trustee may be relieved in whole or in part from his position. If a creditor not assenting to the composition or arrangement shall show to the satisfaction of the Court that the debtor has been guilty of committing any act prohibited under section 266, the Court or Judge is competent to refuse to act upon the composition or arrangement. The Court or Judge may order that the debtor remain liable for the whole or a part of the unpaid balance, after payment of the dividend, of any debt due to a creditor not consenting to the composition or arrangement, where such debt was incurred, or increased by any fraud or collusion, or whereof before the date of the composition or arrangement he obtained forbearance by any fraud or collusion. The Court or Judge may also discharge the order for staying or dissolving proceedings in insolvency by reason of a composition or arrangement where it appears that the same can not be carried out without injustice or undue delay. Preferred creditors not parties to the composition or arrangement are entitled to be paid in full, as in insolvency. The Court or Judge may grant to the debtor a certificate having the same effect as a certificate of insolvency.

Cons. St. 1892, c. 83, §§ 43—51. For a case where an adjudication of insolvency was superseded at the request of the trustees, who were the sole creditors, on the ground that an arrangement had been made, see *In re Lane*, (1817), Tucker, 66. But after a certificate and final discharge has been granted, *semble*, a deed of composition will not be confirmed. — *In re McKay*, (1885), 5 Morr. 44. The assent of creditors to a deed is based on the understanding that all shall share alike, and parties to such deed can not stipulate for special advantages. — *Trustees, etc. v. Alliance Bank*, (1875), 4 Morr. 68. Under the terms of a deed of composition the debtor was to carry on the business, and to pay ten shillings in the pound. The debtor in carrying on the business incurred new debts, and paid to some of the original creditors eight shillings in the pound. The estate was again placed in liquidation, and on application for an order for payment of a dividend it was held that the original creditors who had not received any dividend under the deed should first be paid eight shillings in the pound, and that the residue of the estate should be divided rateably among all of the creditors of the estate. — *In re Ridley & Sons*, (1875), 4 Morr. 56; reversing the order of the Chief Justice in the s. c. (1875), 4 Morr. 44. As to the position of trustees under an assignment for the benefit of creditors, where a deed of composition is afterwards entered into, and confirmed, see *Morris v. Tobin*, (1898), M. & B. 100. As to compromises or compositions of partners and joint debtors, see Cons. St. c. 99. Partnership creditors are not entitled to rank upon the separate estate of a partner, until the separate creditors are satisfied. Conversely, separate creditors are not entitled to rank upon the partnership estate until the partnership creditors are satisfied. — *In re Martin*, (1907).

#### *Parties secondarily liable.*

**265.** The provisions of the law relating to insolvency do not affect the liability of persons secondarily liable for the debts of the insolvent.

Cons. St. 1892, c. 83, § 52.

#### *Penal proceedings.*

**266—267.** A person who has been declared insolvent, and who when insolvent and with a view of giving an undue preference has made a conveyance, gift, transfer, or mortgage of any of his property, or discharged any debtor, or concealed any of his property with intent of diminishing the sum to be divided among his creditors, or falsified, concealed, or destroyed his books or papers, or contracted debts by means of a breach of trust or false pretences, or without reasonable expectation of paying the same, or has put a creditor to unnecessary expense by vexatious defences, or is indebted for damages recovered in actions for certain torts, or has done any other act fraudulent as regards his creditors, may be found guilty of a misdemeanour. Maximum penalty: imprisonment for two years, with or without hard labour. The Court has summary jurisdiction of this class of cases.

Cons. St. 1892, c. 83, § 8. For a case where an insolvent was found guilty of fraud, see *In re Russell*, (1862), 2 Morr. 699.

#### *Costs.*

**232, 233, 236, 268.** The costs of proceedings whereby any portion of the estate is secured before the declaration of insolvency are payable out of the estate. The costs of the petition, and all other costs are in the discretion of the Court or Judge. The costs of proof of debts are borne by the proving creditor. A creditor opposing

the claim of another creditor by frivolous or vexatious defences may have the extraordinary expense of such proof deducted from his dividends.

Cons. St. 1892, c. 83, §§ 17—20. The costs of an attachment levied before the declaration of insolvency may be allowed out of the estate, but not the subsequent costs of proving the debts in the insolvency. — *In re McDonald & Ryan*, (1861), 2 Morr. 556.

#### *Foreign insolvency.*

The above Acts contain no provisions relating to foreign decrees in insolvency, and the distribution of local assets. An English bankruptcy does not necessarily supersede a local declaration of insolvency, but if it appear to the Court that the claims of creditors generally can be most satisfactorily arranged and adjusted in England, the local insolvency may be superseded. — *Stabb, Preston & Prowse v. Stabb, Preston, Prowse & Co.* (1821). Tucker, 298; 1 Morr. 267. Where the residence and place of business of an insolvent is in Newfoundland, and bankruptcy proceedings are taken against him in England, while he is temporarily in that country, and a vesting order made, the effect of such order is to vest in the trustee the debtor's personal property in Newfoundland. — *Williams v. Rogerson* (1854), 2 Morr. 21. And a local trustee appointed after the date of the English vesting order will be ordered to hand over to the English trustee all assets of the bankrupt in this Colony which may have come into his hands. — *In re Rutherford*, (1854), 2 Morr. 55. Where a partnership is doing business in Newfoundland, the non-resident partners are subject to the jurisdiction of the Newfoundland courts in insolvency, and their partnership property is available for distribution among their creditors. — *Trustees, etc. v. Alliance Bank*, (1875), 4 Morr. 68. Where two firms composed of the same members carry on distinct branches of trade in Newfoundland and in another country, and both firms become insolvent, the property and effects of the firm in Newfoundland are to be distributed by trustees appointed in that Colony, and subject to the local law. — *In re Crawford & Co.* (1818), Tucker, 100; 1 Morr. 85; and see s. c. *Tucker*, 242. And, *semble*, the same rule would apply where there are two distinct branches of the same firm, one carrying on business in Newfoundland, the other in another country or colony. — *In re Ryan*, (1818), Tucker, 113; 1 Morr. 96. In that event the property of the firm in each country is exclusively divisible among the creditors, local and foreign, who trusted the branch of the firm established in that country where the property is situated. — *In re Ryan*, (1818), Tucker, 113; 1 Morr. 96; *Ryan & Sons v. Trustees*, (1819), Tucker, 164; 1 Morr. 147. *Sed quære*. All of the assets of the firm form a common fund for the satisfaction of the claims of the general body of creditors, subject to such priorities as may exist under the laws of each country or colony. — *In re Slade*, (1862), 2 Morr. 710.



# Bermuda.

## Introduction.<sup>1)</sup>

The Bermudas or Somers' Islands form a group of about three hundred small islands, of which about twenty are inhabited. Next to Newfoundland the Bermudas are the oldest British colony, and they were the first to obtain representative institutions.

## History and government.<sup>2)</sup>

The discovery of the Bermudas is generally attributed to the Spanish mariner, Juan Bermudez, in 1515. But in the *Legatio Babylonica* of Peter Martyr, published in 1511<sup>3)</sup>, there is a map upon which an island called "La bermuda" is noted, although there is no reference to the Bermudas in the book itself. "We are forced, therefore," says Lefroy<sup>4)</sup>, "to conclude that if Juan de Bermudez was the discoverer, as Herrera<sup>5)</sup> plainly states, and as the association of his name with the group implies, he must have found them on a previous voyage." Several proposals for the settlement of the Bermudas were made to the Spanish government, but none was acted on, and when Admiral Sir George Somers, conveying a party of colonists to the new plantations in Virginia, was wrecked on the Islands in 1609, they were still uninhabited<sup>6)</sup>.

Accounts of the beauty and fertility of the Islands were carried back to England by companions of Admiral Somers, and in 1612 the Virginia Company despatched Richard Moore and fifty settlers to Bermuda. In the same year the Virginia Company transferred its rights to Bermuda to a new company. On 29th June, 1615, the Bermuda Company was incorporated by letters patent, and a regular government established. The first assizes were held 15th June, 1616<sup>7)</sup>, and a representative government inaugurated in 1620. As early as 1620 an Act regulating the manufacture of tobacco was passed, and in the laws of 1622 several sections are devoted to trade. In 1623 and again in 1673 Acts were passed regulating the sale of goods on ship board. The Laws of the Bermuda Company provided that wherever possible the law of England was to be applied<sup>8)</sup>.

The Charter of the Bermuda Company was revoked in 1684<sup>9)</sup>, and on 6th June, 1687, the first Assembly under the Crown was held. Among the Acts passed by this Assembly was one for the establishment of Courts of Judicature.

<sup>1)</sup> The author desires to express his indebtedness to the Honourable Reginald Gray, Attorney-General of Bermuda, for valuable information regarding the law of Bermuda, to the authorities in the office of the Colonial Secretary for copies of the Acts, and to the officials of the Bank of Bermuda and the N. T. Butterfield & Son Bank for information concerning the customs of banks in the Colony. — <sup>2)</sup> In addition to the works cited in this section, see Williams, *An historical and statistical account of the Bermudas*, Godet, *Bermuda, its history, etc.* A bibliography of works relating to Bermuda is contained in Lefroy, 1. c., Vol. II, pp. XI.—XVI. See also Cole, *Bermuda in periodical literature*. — <sup>3)</sup> P. Martyris *Angli Mediolanensis opera*. 1511. There is a copy of this rare work in the Lenox Library in New York. — <sup>4)</sup> L. c., Vol. I., p. 2. — <sup>5)</sup> *Historia general*. Cited in Lefroy, 1. c., Vol. I., p. 2. — <sup>6)</sup> Lefroy, 1. c., Vol. I., pp. 10, et seq. The wreck of Admiral Somers' vessel is believed to be the foundation of Shakespeare's *Tempest*. — <sup>7)</sup> Lefroy, 1. c. Vol. I., p. 227. — <sup>8)</sup> "It is the Governours Office to have care of the due administration of Justice to all the people, as well in cases criminal as Civill; wherein the equity of the Lawes of England, & forme of administration of Justice here used, is to bee followed as much as may be: Nevertheless the Governor of himselfe alone shall not make any order in Causes litigious, without both parties consent: but shall heare and determine Causes with the Councels assistance and assent, in such manner as shall bee hereafter set down." — *Laws of Bermuda Company, 1622*, § 134, reprinted in Lefroy, 1. c., Vol. I., pp. 182—228. — <sup>9)</sup> See *Kennedy v. Trott*, (1849), 6 Moo. P. C. 449.

The present government is regulated by Letters Patent of 19th January, 1888, and 20th January, 1891. The governor is assisted by an executive council appointed by the Crown. The legislative authority is vested in the Legislative Council, consisting of nine members, appointed by the Crown, and a representative House of Assembly, consisting of thirty-six members<sup>1</sup>).

### Law in force.

The common law, the doctrines of equity, and the statutes of general application in force in England at the time of the settlement (11th June, 1612), and applicable to local conditions, are in force, except in so far as they have been modified by local enactments or Imperial legislation extended to the Colony<sup>2</sup>).

The law of England relating to the making, operation, assignment, and discharge of contract is in force. The Statute of Frauds<sup>3</sup>) is not in force in Bermuda, and there is no local Act covering this topic. The rate of interest is governed by the Act of 1861<sup>4</sup>). The rights of aliens are governed by the Alien Act, 1907<sup>5</sup>), and the

<sup>1</sup>) Stat. R. & O. Rev. 1904. Vol. 1, "Bermuda," pp. 1, 5. — <sup>2</sup>) Act No. 4 of 1905, § 12, reprinted in full, *infra*. See *Ingham v. Bell*, Royal Gazette, 2d November, 1880, (agency); *Richardson v. Cartwright*, Royal Gazette, 2d November, 1880, (application of payments); *Secretary of State for War v. Jackson*, M. T. 1881, (repudiation of contract). — <sup>3</sup>) 29 Chas. 2, c. 3. — <sup>4</sup>) Act No. 12 of 1861, continued in force to 31st December, 1913, by Act No. 25 of 1909. The provisions of the Act of 1861 are as follows: 1. All contracts made between any persons in these Islands whereby a higher rate of interest than seven pounds in one hundred pounds by the year is directly or indirectly secured or reserved, and all contracts whereby any real estate in these Islands is directly or indirectly charged with or made liable for interest at a higher rate than seven pounds in one hundred pounds by the year shall be void to all intents and purposes, and no such contract as aforesaid shall be sued on, or be enforced in any Court of law or of equity in these Islands or by any process of any such Court. 2. All sums of money due or payable under or by virtue of any judgment, order, or decree of any superior Court of common law or of equity in these Islands hereafter to be obtained, shall carry interest at the rate of five pounds in one hundred pounds by the year from the time of entering up such judgment, or of obtaining such order or decree, until the same shall be satisfied, and such interest may be levied under a writ of execution, or otherwise recovered in the same manner and by the same process as the principal money may be recovered. 3. All balances of accounts rendered and all book debts, accounts whereof have been rendered, and all written acknowledgments of debts shall carry interest of the rate of five pounds in one hundred pounds by the year in the absence of any agreement in writing to the contrary, provided that no higher rate of interest may be charged on such debts, such interest to commence at the expiration of six calendar months from the time of rendering such accounts or from the date of such acknowledgment. Provided always, that such accounts shall either have been stated and adjusted between the parties, or admitted to be correct, or if not adjusted or admitted to be correct within six calendar months after being rendered, the same shall for the purposes of this clause be deemed to be correct and the balance thereof shall bear interest as aforesaid from the expiration of six calendar months from the time of the same being rendered. 4. Accounts properly addressed and transmitted through the Post Office shall for the purposes of this Act be deemed to have been rendered at the date when the same were so transmitted in the absence of proof that the same have not been received, and in the absence of proof when the same were received by the person charged. 5. Notwithstanding anything in this Act contained, the legal rate of interest shall be five pounds in every one hundred pounds by the year in all cases not expressly provided for by this Act, and except where any other rate of interest, not exceeding in any case seven pounds in one hundred pounds by the year is contracted for in writing, signed by the party or parties to be bound or charged by such contract. 6. Nothing herein contained shall prejudice or affect the rights or remedies of any person, or diminish or alter the liabilities of any person in respect of any act done previously to the passing of this Act. 7. Nothing herein contained shall be construed to extend to marine interest, or interest on advances or loans made on bottomry or respondentia bonds or contracts. — <sup>5</sup>) Act No. 12 of 1907. The principal provisions of this Act are as follows: 2. 1. Subject to the express provisions of this Act, real and personal property of every description may be taken, acquired, held, and disposed of, by an alien in the same manner in all respects as by a natural born British subject; and a title to real and personal property of every description may be derived through, from, or in succession to, an alien, in the same manner in all respects as through, from, or in succession to, a natural born British subject; but the provisions of this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him. 2. The provisions of the preceding subsection shall apply to any real property which, prior to the coming into operation of this Act, has become vested in any alien by devise or inheritance. 3. 1. The sanction of the Governor-in-Council shall be required before an alien can acquire by deed any land in these Islands: Provided a) That the Governor-in-Council may withhold such sanction, with or without assigning any reason; b) That the Governor-in-Council shall not give his sanction to the acquisition by aliens



property rights of married women by the Act of 1901<sup>1</sup>). There are no local Acts relating to factors, marine insurance, or sale of goods<sup>2</sup>.) Merchandise marks are governed by the Act of 1889<sup>3</sup>).

of land by deed to an extent of more than two thousand acres in the whole, or to a greater extent than four hundred acres in any one parish, exclusive of allotments made in the City of Hamilton or the Town of St. George; c) That no alien shall acquire land by deed and hold the same to a greater extent at any one time than fifteen thousand superficial feet if the land is situated in Hamilton or St. George's, or to a greater extent than twenty-five acres if situated elsewhere. 2. Notwithstanding anything to the contrary contained in the preceding subsection the Governor-in-Council may sanction the acquisition by an alien, by deed, of land exceeding the amount therein specified if such land has been held and enjoyed by the vendor as a single undivided property. 3. The Governor-in-Council may make regulations prescribing the form and manner in which applications shall be made to obtain the sanction of the Governor-in-Council for the acquisition of land by aliens, and any matters incidental thereto. 4. Any alien applying to the Governor-in-Council for his sanction for the acquisition of land by such alien shall pay to the Colonial Secretary a fee of one pound, and such fee shall be paid into the Public Treasury. 4. 1. Whenever any alien shall take or acquire any land in these Islands by deed, or by devise or inheritance, he shall within six months after the date on which he shall acquire such land deposit in the Colonial Secretary's Office of the said Islands a memorandum in writing containing the name of such alien, the name of the person from whom he acquired such land, the date of acquisition, the mode of acquisition, a full description of the land acquired including the accurate area thereof and the estate or interest so taken or acquired by the alien therein, and such memorandum shall be signed by such alien, or by his attorney or agent, and a fee of three shillings shall be paid on the deposit of such memorandum, and the Colonial Secretary shall cause all such memorandums to be recorded in a book to be provided and kept for the purpose. 2. If any alien shall not within six months after the date on which he shall take or acquire any land in these Islands deposit in the Colonial Secretary's Office the memorandum required by the preceding sub-section, such land, shall, except as hereinafter otherwise provided, be liable to be escheated to the Crown; provided always, that at any time prior to such escheat the Governor-in-Council may, on the written application of such alien, allow such alien such further time for the deposit of such memorandum as the Governor-in-Council shall see fit, on such alien paying into the public treasury such fine not exceeding one hundred pounds as the Governor-in-Council shall see fit to impose on such alien for his failure to comply with the preceding sub-section, and if such memorandum shall be deposited and such fine paid within the time allowed as aforesaid the effect thereof shall be the same as if such alien had duly complied with the provisions of the said subsection. 3. A citizen of the United States of America to whom real property has passed under the conditions mentioned in the Convention set forth in the first schedule to this Act shall not, during the time, or any prolongation thereof allowed to him as hereinafter provided, to sell such property, be bound to deposit the memorandum in the first subsection mentioned but such liability shall be deemed to commence only as from the expiration of such time or any prolongation thereof. Provided always that nothing herein contained shall be construed to prevent the deposit of such memorandum at any time prior to the expiration of the time allowed for the sale of such real property for any such prolongation thereof as aforesaid. 5. Nothing contained in this Act shall qualify an alien, by reason of his own or his wife's ownership of land, to be a member of the Legislature, or for any parliamentary, parochial, or municipal franchise. 6. Nothing contained in this Act shall entitle any alien to engage in the business of dealing or speculating in land. Whether an alien is or is not engaged in the business of dealing or speculating in land shall be a question of fact to be decided in any proceedings for escheat taken in respect of the contravention of the provisions of this section by an alien. 7. 1. Subject to the provisions of subsection 2 of section three nothing contained in this Act shall entitle an alien to hold, at any one time, land to a greater extent than twenty-five acres which has become vested in him by virtue of a judgment for foreclosure, or as a result of any such judgment and of acquisition by deed, but any such alien shall, subject to the provisions aforesaid, dispose of any excess of land over and above the twenty-five acres aforesaid within a period of two years after such excess shall have been created. 2. No land held in excess in the manner in the preceding subsection mentioned shall be escheated during the aforesaid period of two years. 8. The limitations imposed by this Act on the amount of land acquired by deed that may be held by an alien shall apply to the combined holdings of land by a husband and wife. 9. Any deed by which a married woman, being an alien, shall dispose of land in these Islands, may be executed without the concurrence of her husband in the same manner as if she were unmarried, and her receipt alone shall be a good discharge for the purchase money, and it shall not be necessary for such deed to be acknowledged in the manner in which married women are now required by law to acknowledge certain deeds executed by them for conveying land in these Islands. The land must be acquired within six months. — Act No. 2 of 1911, § 1.

<sup>1</sup>) Act No. 14 of 1901. The provisions of this Act are similar to those of the *Imperial Married Women's Property Act, 1882*, (45 & 46 Vic. c. 75), as amended by the *Married Women's Property Act, 1893*, (56 & 57 Vic. c. 63). — <sup>2</sup>) Except such as are contained in the *Merchandise Marks Act*,

## Courts and procedure.

The judicial system comprises a Supreme Court and courts of justices of the peace. The Supreme Court is composed of a Chief Justice and two Assistant Justices<sup>1)</sup>. The Supreme Court is a superior court of record, and, in addition to any jurisdiction specially conferred under any Act, has the jurisdiction existing prior to 1905 in the following Courts of the Colony: The Court of General Assize, the Court of Chancery, the Court of Exchequer, the Court of Probate, the Court of Ordinary, and the Court of Bankruptcy<sup>2)</sup>. Law and equity are administered concurrently, the rules of equity prevailing in case of conflict<sup>3)</sup>. The Supreme Court is a Court of Appeals from the inferior courts of the Colony<sup>4)</sup>, and a Court of Admiralty under the Colonial Courts of Admiralty Act, 1890<sup>5)</sup>.

The Justices' Courts have summary jurisdiction in actions of trespass where the amount involved does not exceed 24 s., in actions of debt where the amount involved does not exceed £10<sup>6)</sup>, and in actions on balance of accounts not exceeding £10, provided that the sum sued for has been acknowledged by the defendant in writing, or such acknowledgment is proved by two witnesses<sup>7)</sup>. An appeal lies to the Supreme Court.

An appeal lies to the Privy Council from any final judgment or order of the Supreme Court: in any suit, action, or matter in which the sum or matter at issue exceeds the amount or value of £300, or in which there is involved directly or indirectly any claim, demand, or question to or respecting any property or civil right of the said amount or value. A petition for leave to appeal must be filed within twenty-one days after the date of the judgment or order, and security not exceeding £500 for the due prosecution of the appeal must be furnished within three months<sup>8)</sup>.

Actions of account and upon the case, other than such accounts as concern the trade between merchants, their factors or servants, actions of debt arising out of a simple contract, actions for rent, detinue, replevin, and actions for seamen's wages, must be brought within six years next after the cause of action arose<sup>9)</sup>.

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1889. (Act No. 17 of 1889) §§ 16, 17. Where goods are sold by description and the seller delivers goods that do not answer the description, the buyer has a reasonable time in which to return them. — *Heney v. Tyler*, Royal Gazette, 25th October, 1881. The transfer of property depends upon the intention of the parties. If the negotiations leading up to the contract are with reference to a specific article in existence at the time the contract is made and if the price is fixed, the property passes when the contract is made. — *Golinsky v. Dunkley*, Royal Gazette, 3d July, 1909.

— <sup>2)</sup> The *Merchandise Marks Act, 1889*, is identical in all material respects with the Imperial *Merchandise Marks Act, 1887*, (50 & 51 Vic. c. 28). The Bermuda Act was continued in force until 31st December, 1913, by Act No. 12 of 1904.

<sup>1)</sup> Act No. 4 of 1905, § 3. — <sup>2)</sup> Ibid. § 10. — <sup>3\*)</sup> Ibid. § 15. — <sup>4)</sup> 53 & 54 Vic. c. 27. — <sup>5)</sup> Act No. 4 of 1905, § 39. — <sup>6)</sup> Act No. 10 of 1850, § 2. — <sup>7)</sup> Ibid. § 8. — <sup>8)</sup> Act No. of 1911. — <sup>9)</sup> Act No. 19 of 1782, §§ 1, 10. — <sup>10)</sup> The text of a number of the Acts passed prior to 1690 may be found in Lefroy, *Memorials of the discovery and early settlement of the Bermudas or Somers Islands*. Some mss. of early laws are in the British Museum. Certain of the laws, 1623—1663, and orders, 1622—1661, additional to the printed laws of 1622, are among the Rawlinson mss. in the Bodleian Library, Oxford. There are no collections of the judgments of the Courts. A number of cases are reported in the newspapers, notably in the *Royal Gazette*. The cases so reported between 1st January, 1875, and 1st August, 1910, have been consulted with reference to the present work. There are a number of early cases, chiefly criminal, reported in Lefroy, l. c. —



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## Statutes.<sup>1)</sup>

### Application of Law.

#### No. 4 of 1905. The Supreme Court Act, 1905 (15th February, 1905).

**How far law of England in force.** 12. Subject to the provisions of any Acts which have been passed in any way altering, amending, or modifying the same, and of this Act, the common law, the doctrines of equity, and the statutes of general application which were in force in England at the date when these Islands were settled, that is to say on the eleventh day of July one thousand six hundred and twelve, shall be, and are hereby declared to be, in force within these Islands.

Although the Act contains no limitation to that effect, only such Imperial Acts and doctrines of the law of England are in force as are applicable to local conditions. By virtue of this section, *semble*, the following Imperial Acts are, *inter alia*, in force, except as affected by the Bankruptcy Act, 1876:

3 Hen. 7, c. 4. Fraudulent deeds of gift.

13 Eliz. c. 5. Fraudulent conveyances.

27 Eliz. c. 4. Fraudulent conveyances. But voluntary conveyances of land, if bona fide, are not avoided if registered within six months. — Act No. 24 of 1906.

### Partnership.

#### a) No. 24 of 1883. The Limited Partnership Act, 1883 (18th December, 1883).

**Short title.** 1. The *Limited Partnership Act, 1883*.

**Limited partnerships may be formed.** 2. Limited partnerships for the transaction of all mercantile, mechanical, manufacturing, or other business, except banking or insurance, may be formed by two or more persons.

**Limited partnership of whom to consist.** 3. Such partnership may consist of one or more general partners, who shall be jointly and severally responsible, as partners now are by law, and also of any other persons who shall contribute to the common stock, a specific sum in actual cash payments as capital, who shall be called special partners, and shall not be personally liable for any debts of the partnership, except as hereinafter mentioned.

**What certificate required.** 4. The persons forming such partnerships shall make and severally sign a certificate, which shall contain the name of the firm of the partnership, the names and respective places of residence of the general and special partners, distinguishing the general from the special, the amount of capital each special partner has contributed, the general nature of the business to be transacted, and the time when the partnership is to commence and terminate.

**When deemed to be formed.** 5. No such partnership shall be deemed to have been formed until a certificate, made as aforesaid, shall be registered in the office of the Registrar of the Supreme Court, in a book to be kept for that purpose, open to public inspection; and if any false statement shall be made in such certificate, all the persons interested in the partnership shall be liable as general partners for the engagements thereof.

<sup>1)</sup> As in force 1st January, 1912.

**Copy of certificate to be published. 6.** The partners shall, for six weeks immediately following such registry publish a copy of the certificate above mentioned in the *Gazette*; if such publication be not so made the partnership shall be deemed general.

**Duration of liability. 7.** Every such partnership shall be held to continue on the original terms, unless the special partners, or any one or more of them, desire to be discharged from further liability, in which case a certificate shall be signed and registered, as in the first instance, declaring their withdrawal from the concern, but no special partner shall be allowed to withdraw before having paid up all the capital for which he has subscribed.

**The firm to contain the names of the general partners only.<sup>5</sup> 8.** The business of the partnership shall be conducted under a firm in which the surname or surnames of the general partners only shall be inserted, without the addition of the word "company" or any other general term; and if the name of any special partner shall be used in such firm with his privity, or if he shall personally make any contract with any person except the general partners respecting the concerns of the partnership, he shall be deemed a general partner.

**The partnership business to be conducted by the general partners. 9.** The general partners only shall be authorised to transact business and sign for the partnership, and to bind the same.

**General partners' liability to account. 10.** The general partners shall be liable to account to each other, and to the special partners, for their management of the concern, both at law and in equity, as other partners are now liable.

**Partners guilty of fraud liable both civilly and criminally. 11.** Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage, and shall also be liable to an indictment for a misdemeanour, punishable on conviction by fine or imprisonment or both, at the discretion of the Court by which he shall be tried.

**During partnership capital not to be withdrawn. 12.** During the continuance of any such partnership, no part of the capital stock thereof shall be withdrawn, nor any division of interest or profits be made, so as to reduce such capital stock below the sum stated in the certificate before mentioned.

**Transfer of interest. 13.** Any special partner, or in case of his death his executors or administrators, may at any time sell his individual interest or any part thereof in the partnership; but no transfer of such interest shall be deemed to be completed until a certificate shall be made and signed by the vendor and by the purchaser, and registered in the book to be kept in the office of the Prothonotary, which certificate shall contain the names of the vendor and purchaser, the amount of stock transferred and the price paid for the same; and on such certificate being registered the purchaser shall be deemed a special partner with respect to the amount of stock transferred.

**No assignment of partnership assets allowed except on certain conditions. 14.** No general assignment by such partnership in case of insolvency or insufficiency of assets for the payment of the partnership debts shall be valid without the consent in writing of two-thirds in value of the creditors of the partnership, nor unless it shall provide for a distribution of the partnership property among all the creditors in proportion to the amount of their several claims; notice of which shall be given in the *Gazette*; but debts due to Her Majesty shall first be paid or secured.

**Assignments and securities in fraud of creditors to be void. 15.** Every sale, assignment or transfer, of the property or effects of any such partnership made by such partnership when actually insolvent or bankrupt, or in contemplation of insolvency or bankruptcy, or after or in contemplation of the insolvency or bankruptcy of any partner, with the intent of giving a preference to any creditor or creditors of such partnership over any other creditor or creditors thereof, and every judgment confessed, lien created, or security given, by such partnership, or any partner thereof, under the like circumstances, and with the like intent, shall be void as against the creditors of such partnership.

**Claims of special partners to be postponed in case of bankruptcy to other creditors. 16.** In case of the insolvency or bankruptcy of the partnership no special partner shall under any circumstances be allowed to claim as a creditor until the claims of all the other creditors of the partnership shall be satisfied.



**Actions, by and against whom. 17.** All suits respecting the business of such partnership shall be prosecuted by and against the general partners only, except in those cases where special partners shall be held severally responsible.

**Alterations in names of partners to be certified and published. 18.** Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership, unless a certificate of such alteration shall have been made and signed, and such certificate shall have been registered and published, in the manner hereinbefore provided with respect to the original formation of such partnership; and any such partnership which shall in any manner be carried on after any such alteration shall have been made, otherwise than in accordance with this enactment, shall be deemed a general partnership, unless renewed as a special partnership in accordance with the provisions of the next section of this Act.

**Continuance of partnership to be certified and published. 19.** Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified and registered, and notice thereof shall be given, in the manner herein required for its original formation: and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

**Dissolution. 20.** Except as hereinbefore provided, no dissolution of such partnership shall take place, except by operation of law, unless a notice thereof shall be registered in the same manner as the original certificate, and unless such notice shall be published for six successive weeks in the *Gazette*.

**Rights and liabilities. 21.** In all cases not otherwise herein provided for, the members of limited partnerships shall be subject to all the liabilities, and entitled to all the rights of general partners.

**Dividends and profits. 22.** A certificate of the dividends interest or profits derived from any such partnership by the special partners, shall, as often as the same shall be ascertained or declared, be signed by the general partners or one of them, setting forth the amount of the actual cash payments originally subscribed and paid by the special partners, and the dividend or profits and sums of money declared payable under such statement to each of all the partners; which certificate shall be registered in the office of the Registrar of the Supreme Court; but no such dividend shall be declared for any period of less than one year.

**Book to be procured by Prothonotary. May be inspected. Fees to Prothonotary. 23.** The Registrar of the Supreme Court shall procure at the public expense, a suitable book in which be registered or recorded the certificates and notices above mentioned; which book shall be open, during office hours, to the inspection of all persons desiring to view the same, on payment to the said Prothonotary of the fee of two shillings and the said Prothonotary shall be entitled to receive the sum of £1 for registering or recording every such certificate and notice as hereinbefore mentioned; and such book and the entries therein shall be receivable in evidence in any Court of law or equity in these Islands.

## **b) No. 10 of 1902. An Act to declare and amend the Law of Partnership (24th June, 1902).<sup>1)</sup>**

### *Nature of partnership.*

**Definition of partnership. 1.** 1. Partnership is the relation which subsists between persons carrying on a business in common with a view of profit. 2. But the relation between members of any company or association which is: a) Registered under any Act of the Legislature of these Islands which shall be hereafter passed for the incorporation and regulation of Joint Stock Companies, or any other Act of the Legislature of these Islands, or any Act of the Imperial Parliament for the time being in force in these Islands relating to the registration of joint stock com-

<sup>1)</sup> The references (Imp.) are to the *Imperial Partnership Act, 1890*, (53 & 54 Vic. c. 39).

panies; or b) Formed or incorporated by or in pursuance of any other Act of the Legislature of these Islands, or of the Imperial Parliament or letters patent, or Royal Charter; is not a partnership within the meaning of this Act.

Imp. § 1, there is no Joint Stock Companies Act in force in Bermuda. See note to Act No. 27 of 1885, *infra*.

2—4. = Imp. §§ 2—4 (1).

*Relations of partners to persons dealing with them.*

5—8. = Imp. §§ 5—8.

9. = Imp. § 9, except: "and in Scotland severally also" and "in England or Ireland" are omitted.

10—18. = Imp. §§ 10—18.

*Relations of partners to one another.*

19. = Imp. § 19.

20. = Imp. § 20, except: in (2) "or in Scotland the title to and interest in any heritable estate" is omitted; in (3) "or in Scotland of any heritable estate" is omitted.

21. = Imp. § 21.

22. = Imp. § 22, except: "or any heritable estate," "or moveable," and "or heritable" are omitted.

**Procedure against partnership property for a partner's separate judgment debts.**

23. 1. After the commencement of this Act a writ of execution shall not issue against any partnership property except on a judgment against the firm. 2. The Court may, on the application by petition of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require. 3. The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

Imp. § 23.

24—34. = Imp. §§ 24—34.

35. = Imp. § 35, except: in (a) "or in Scotland by cognition" is omitted.

36. = Imp. § 36, except: (2) reads as follows: "An advertisement in the *Gazette* shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised."

37—40. = Imp. §§ 37—40.

41. = Imp. § 41, except: "is" is omitted before (b).

42. = Imp. § 42, except: in (2) "future or other share of profits" is substituted for "further or other share of profits."

43—44. = Imp. §§ 43—44.

**Definitions of "Court" and "business".** 45. In this Act, unless the contrary intention appears: The expression "the Court" means the Court of Chancery of these Islands. The word "business" includes every trade, occupation, or profession.

46. = Imp. § 46.

**Power to make rules.** 47. The Court shall have power to make such rules or orders as it shall deem necessary for carrying into effect the provisions of this Act so far as they relate to the jurisdiction of the Court.

**Commencement of Act.** 48. This Act shall come into operation on the first day of October, one thousand nine hundred and two.

Imp. § 49.

**Short title.** 49. This Act may be cited as *The Partnership Act, 1902*.

Imp. § 50.



### Companies.<sup>1)</sup>

#### No. 27 of 1885. An Act relating to Suits against Public Companies abroad having Agencies in these Islands (10th November, 1885).

Companies incorporated abroad but trading through local agencies made liable to be sued in the Court of General Assize in respect of causes of action arising in these Islands. Service of process on local agent sufficient. Power to Court to protect defendant companies against surprise. 1. Companies and corporate bodies incorporated out of these Islands, for banking, insurance, or other trading purposes, and doing business in these Islands by agents or branches, may be sued, at law or in equity, in the Court of General Assize of these Islands, for any cause of action, legal or equitable, arising in whole or in part in these Islands, by the name whereby they are, or purport to be, associated or incorporated, or under which they carry on business in these Islands; and service of any process, pleading, rule, or notice on the agent, or any one of the agents, or manager, of the company or association in these Islands shall be deemed good and sufficient service on the company; and all such suits may be prosecuted and carried on to judgment or decree in like manner as if the defendant company were formed, or incorporated, or established in these Islands, or had its principal place of business therein; provided that in all such suits and proceedings it shall be competent to the Court to make such orders with respect to pleading and practice as the Court shall deem necessary for securing the defendant company against surprise, or undue haste in prosecuting the suit or other proceeding.

Time may be allowed to agent to communicate with company. 2. The Court or a Judge at Chambers may on sufficient cause shewn allow reasonable time for the agent or manager to communicate with the defendant company and may make such order with respect thereto, and on such terms or conditions, as justice may require.

Judgment in any such suit to bind the real estate and execution to bind the personal estate of the company in these islands. 3. If judgment shall pass, or any decree or order shall be made, in any such suit or proceeding, in favour of the plaintiff or person suing, or against the defendant company, such judgment or decree shall be or create a charge on any real estate of the company in these Islands, and execution or other process for enforcing such judgment or decree may be sued out in like manner and form against the defendant company as if such company were established or had its principal place of business in these Islands, or as near thereto as circumstances will permit, or in such form as the Court, or a Judge at Chambers, shall sanction, and may be served on the agent or manager, and shall bind the assets of the company in these Islands or which then are in, or afterwards shall come to, the hands or under the control of such agent or manager, subject always to the agent's or manager's lawful charges or commissions thereon.

Agent may be examined as to defendant company's assets in these Islands. 4. After any judgment or decree given, or any order made, in any suit against the

<sup>1)</sup> There is no Companies Act in force in the Colony. Certain local companies with limited liability are incorporated under special Acts. These companies, and the Acts governing them, are as follows:

- Bermuda Coal Co. — Act No. 21 of 1884.
- Bermuda Telephone Co. — Act No. 2 of 1886/87.
- Bank of Bermuda — Acts No. 6 of 1890, 10 of 1911, and 30 of 1911.
- Princess Hotel Co. — Acts Nos. 35 of 1890, II. and 56 of 1900.
- Bermuda Fire & Marine Insurance Co. — Acts Nos. 16 of 1903 and 25 of 1904.
- N. T. Butterfield & Son Bank — Act No. 11 of 1904.
- Bermuda Electric Light, Power, and Traction Co. — Acts Nos. 21 of 1904, 2 of 1907, 15 of 1910. See *Hamilton v. Bermuda, etc., Co.*, Royal Gazette, 28th December, 1907.
- Hamilton Dry Goods Co. — Act No. 34 of 1905.
- St. George's Hotel Co. — Act No. 3 of 1906.
- Bermuda Hotel Co. — Act No. 18 of 1907.
- Bermuda Green Vegetable Growers Association — Act No. 32 of 1907.
- Hamilton Hotel Co. — Act No. 37 of 1907: See also Act No. 8 of 1908.
- Royal Gazette Co. — Act No. 40 of 1907.
- Colonist Press Co. — Act No. 1 of 1908.
- Bermuda Boat & Canoe Club — Act No. 3 of 1909.
- Bermuda-Atlantic Hotel — Act No. 26 of 1911.

defendant company, it shall be lawful for the Court, or a Judge at Chambers, to cause the agents or managers of the company to be examined from time to time on oath before the Court or a Judge concerning the assets or property of the company in these Islands; and it shall be lawful for the Court or Judge to make such order therein as to justice may pertain, and such order may, if the Court or Judge shall so order, be enforced against any agent or manager personally.

**Appeal to Court against order of Judge at Chambers. 5.** From every order of any Judge at Chambers made under this Act there shall always lie an appeal to the Court; and the Court shall have power, by any special or general order, to direct how such appeal shall be conducted, and also shall have power on any such appeal to vary or rescind the order appealed against, or to make such other order in the matter as the Court shall see fit.

**Costs to be in the discretion of the Court. 6.** In any suit or proceeding under this Act the Court shall have power to allow such costs to either party, whether as between client and solicitor, or as between party and party, as to the Court shall seem fit.

**This Act not to derogate from existing rights against absent companies. 7.** Nothing in this Act contained shall prevent any person proceeding against any company or association of persons out of these Islands, or the assets, property, or effects of any company or association of persons out of these Islands, in like manner as if this Act had not been passed.

## Trading Stamps.

### No. 7 of 1905. The Trading Stamp Act, 1905 (17th March, 1905).

**Interpretation. 1.** In this Act, unless the context otherwise requires, the following expressions and words shall have the meanings assigned to them in this section: 1. "Trading stamp" means any stamp, ticket, coupon, label, or other similar device, which will entitle the holder thereof on presentation thereof, either singly or in any definite number, to receive either directly from the vendor or indirectly from any other person money or goods. 2. "Money" means British money. 3. "Goods" means goods, wares, or merchandise. 4. "Vendor" means any person engaged in any trade; business, profession, or occupation who on or in consideration of the purchase from him of any goods, issues, gives, or delivers to the purchaser any trading stamp.

**Vendors not to issue trading stamps unless the redeemable value is stamped or printed thereon. 2.** After this Act shall come into operation it shall not be lawful for any vendor to issue any trading stamp to any person unless the same shall have legibly stamped or printed on the face thereof the redeemable value thereof in money, which shall not be less than one fifth of a penny.

**Trading stamps to have stamped or printed thereon the name of the vendor, and to be redeemable by him at their face value. 3.** Every trading stamp issued by any vendor shall have legibly stamped or printed on the face thereof the initials and surname, or corporate or firm name, of the vendor, and every vendor shall be liable upon presentation thereof by the holder to redeem all trading stamps issued by such vendor at the face value thereof in money, and it shall not be necessary for the holder to have any stipulated number of trading stamps before being entitled to demand redemption of the same in money, except that a vendor shall not be liable to redeem any trading stamps aggregating in face value less than three pence nor to redeem at any time any trading stamps the face value of which is a fractional part of one penny.

**Goods kept by any vendor to be supplied in exchange for stamps to have value marked thereon and corresponding number of stamps. 4.** Every vendor who has or keeps on his business premises any goods to be delivered or supplied to the holders of trading stamps issued by such vendor in exchange for such trading stamps shall legibly mark on each article the value thereof in money, and the corresponding number of trading stamps issued by such vendor which will be received by him in exchange for such article, and the holder of any trading stamps of such vendor shall be entitled to demand and receive such article from such vendor in exchange for the number of stamps so marked thereon.



**Penalties on vendors issuing trading stamps without the value or name thereon.** 5. Any vendor who shall issue any trading stamp which has not legibly stamped or printed on the face thereof the redeemable value thereof in money, and the initials and surname, or corporate or firm name, of the vendor, shall be liable on conviction before any two Justices of the Peace, or any Police Magistrate, to such penalty not exceeding five pounds for a first offence, and not exceeding ten pounds for a second or any subsequent offence as the Justices or Police Magistrate shall award, besides costs of prosecution if awarded.

**Remedy where vendor refuses to redeem stamps.** 6. If any vendor shall refuse to redeem any trading stamps as required by the third section of this Act the holder of such stamps shall be entitled to recover the face value thereof from the vendor as a debt.

**Publication of Act.** 7. This Act shall be published in the *Gazette* as soon as practicable after the passing thereof.

**Exemptions from operation of Act.** 8. This Act shall not apply in any of the following cases: 1. To any printed ticket, coupon, label, or other voucher which is placed in or on any wrapper package or goods supplied in that condition by any merchant or manufacturer abroad to any person in these Islands and sold by him in the like condition, where it is clearly indicated on such ticket, coupon, label, or other voucher that it is redeemable in the manner indicated thereon only by such merchant or manufacturer, or on his behalf by the person selling the same; 2. To any printed ticket, coupon, label, or other voucher which is placed by any merchant or tradesman in these Islands in or on any wrapper, package, or goods supplied by him in that condition to any person who sells the same in the like condition, where it is clearly indicated on such ticket, coupon, label, or other voucher that it is redeemable in the manner indicated thereon only by such merchant or tradesman; 3. To any printed ticket, coupon, label, or other voucher issued by any merchant or tradesman in his own name to a cash customer at the time of the purchase by him of any goods from such merchant or tradesman, where it is clearly indicated on such ticket, coupon, label, or other voucher that it is redeemable in the manner indicated thereon only by such merchant or tradesman. Provided that, in any prosecution for any offence under this Act in which the defendant claims exemption under any of the provisions of this section the burden of proving such exemption shall be on the defendant.

**Commencement on 1 July 1905, or later by proclamation, and duration, 31 December, 1907.** 9. This Act shall come into operation on the first day of July next or on such later date as the Governor shall notify by proclamation for the purpose, and shall continue in force until and throughout the last day of December one thousand nine hundred and seven.

The Act has been continued in force to 31st December, 1912. — Act No. 26 of 1907, § 1.

## Bills of Lading.

### No. 2 of 1863. An Act to adopt certain Provisions of the Law of England relating to Bills of Lading (3d August, 1863).

**Consignee and endorsee to have rights and liabilities of suit for the property conveyed in bills of lading.** 1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities, in respect of such goods, as if the contract contained in the bill of lading had been made with himself.

**No rights against original shipper or consignee or endorsee to be prejudiced.** 2. Nothing herein contained shall prejudice or effect any right of stoppage in transitu, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee, be reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

**Bill of lading good evidence of the articles it specifies against master, unless, etc. Proviso. 3.** Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped; unless such holder of the bill of lading shall have had actual notice at the time of receiving the same, that the goods had not been in fact laden on board; provided, that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or of some person under whom the holder claims.

A carrier's liability continues until the goods are delivered to the consignee or his agent (e. g., a carman). A mere placing on the wharf, and removal by a carman or other person without the knowledge or authority of the freight clerk is not a delivery. — *Fraser v. Burrows*, Royal Gazette, 26th April, 1883.

### **Bills of Exchange.<sup>1)</sup>**

#### **No. 3 of 1874. An Act to amend the Law relating to Bonds and Promissory Notes (16th July, 1874).**

**Repeal of 6 of 1786. 1.** The Act entitled "An Act for the better recovery of debts due on promissory notes and the assignment of bonds, obligations and notes" is hereby repealed, except as to any contracts, rights, or liabilities already obtained or contracted before the passing of this Act, which may be sued on and enforced as if this Act had not been passed.

**Promissory notes who liable on. 2.** All notes in writing that after the passing of this Act shall be made and signed by any person, or body politic or corporate or by the servant or agent of any corporation, banker, merchant, or trader who is usually entrusted by him or them to sign such promissory notes for him or them whereby such person, body politic and corporate, his or their servant or agent doth or shall promise to pay to any other person, body politic or corporate, his or their order, or unto bearer any sum of money mentioned in such note, shall be construed and taken to be by virtue thereof due and payable to any such person, or body politic or corporate, to whom the same is made payable; and also every such note payable to any person, body politic or corporate, or his or their order, shall be assignable or endorsable over in the same manner as bills of exchange, and the person, or body politic or corporate, to whom such sum of money is or shall be by such note made payable, shall and may maintain an action for the same against the person, or body politic or corporate, who or whose servant or agent signed the same; and any person, or body politic or corporate, to whom such note that is payable to any person, or body politic or corporate, or his or their order, is endorsed or assigned, or the money therein mentioned ordered to be paid by endorsement thereon, shall or may maintain his or their action for such sum of money, either against the person, or body politic or corporate, who or whose servant or agent signed such note, or against any of the persons that endorsed the same, in like manner as in cases of bills of exchange.

**Bonds or bills, who liable on. 3.** It shall be lawful for any person, or body politic or corporate, to assign by endorsement or otherwise any bond, bill, or other obligation by which the payment of money may be secured to such person, or body politic or corporate, to any other person or body politic or corporate, and the assignee or endorsee of such bond, bill, or other obligation, his and their executors, administrators or successors, shall by virtue of such assignment or endorsement

<sup>1)</sup> The law relating to bills of exchange, promissory notes, and cheques is in a most unsatisfactory state. There are no local Acts in force, except the one here reprinted. By custom the general law of England relating to these instruments is observed. Days of grace are allowed, but inland notes, payable at local banks, are ordinarily so worded as to exclude days of grace. Crossed cheques are not ordinarily in use. There are no bank holidays, but on Christmas Day, the day after Christmas Day, Good Friday, Victoria Day (24th May), Boxing Day, and days appointed by the Governor as public holidays the banks are closed. There is no stamp duty on bills, notes, and cheques.



have lawful power to commence and prosecute any suit at law in his or their own name or names, for the recovery of any debt due by such bond, bill, or other obligation as the first obligee, his executors or administrators, might or could lawfully have done. Provided that in any suit under this clause, on any such bond, bill, or other obligation so made assigned or endorsed, the plaintiff shall allow the defendant to set off all lawful demands of the defendant against the original obligee, which were incurred or became due before the defendant had notice of such assignment or endorsement.

**Bills of exchange not affected.** 4. Nothing in this Act shall affect the law relating to bills of exchange, or the respective rights or liabilities of persons consequent on the endorsement or assignment of bills of exchange.

### Public Holidays.

#### No. 18 of 1901. The Victoria Day Act, 1901 (3d October, 1901).

**The 24th May to be called Victoria Day.** 1. From and after the passing of this Act the twentyfourth day of May in each year shall be called "Victoria Day" to perpetuate the memory of our late Most Gracious Sovereign Lady Queen Victoria.

See note to Act No. 3 of 1874.

**Victoria Day to be observed as a public holiday in all public offices.** 2. Victoria Day, or, if that day fall on a Sunday, the following Monday, shall hereafter in each year be observed as a public holiday in all the public offices of the Colony, and, except as hereinafter provided, no public officer shall on that day be required to perform any public duty or service; provided that the said day shall only be observed as a post office holiday on the same conditions as other post office holidays under the provisions of the fourth section of *The Post Office Act, 1900*; and provided also that nothing herein contained shall prevent any part of the work of the Revenue Department being performed on the said day in cases expressly provided for or allowed by law with respect to other office holidays in that Department.

### Bankruptcy.

#### a) No. 27 of 1876. An Act to provide for the better Administration of the Estates of Insolvent Debtors (4th November, 1876).<sup>1)</sup>

##### *Preliminary.*

**Short title.** 1. This Act may be cited as the *Bermuda Bankruptcy Act, 1876*. Imp. § 1.

**Interpretation of certain terms in the Act.** 2. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them, that is to say: "The Court" shall mean the Court having jurisdiction in bankruptcy as by this Act provided. "The Registrar" shall mean the Registrar of "the Court" as above defined. "Prescribed" shall mean prescribed by Rules of Court to be made as in this Act provided. "Property" shall mean and include money, goods, things in action, land, and every description of property, whether real or personal; also obligations, easements, and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined. "Debt provable in bankruptcy" shall include any debt or liability by this Act made provable in bankruptcy. "Person" shall include a body corporate. "Gazette" shall mean any newspaper in which Government notices are published by authority.

Imp. § 168.

<sup>1)</sup> The references in the notes (Imp.) are to the *Imperial Bankruptcy Act, 1883*, (46 & 47 Vic. c. 52), unless otherwise indicated.

## *Part I. Adjudication and Vesting of Property.*

### *Adjudication.*

**Petition for adjudication in bankruptcy.** 3. A single creditor, or two or more creditors, if the debt due to such single creditor, or the aggregate amount of debts due to such several creditors from any debtor amount to a sum of not less than fifty pounds, may present a petition to the Court, praying that the debtor be adjudged a bankrupt, and alleging as the ground for such adjudication any one or more of the following acts or defaults, hereinafter deemed to be and included under the expression "acts of bankruptcy:" 1. That the debtor has, in Bermuda or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally; 2. That the debtor has, in Bermuda or elsewhere, made a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof; 3. That the debtor has, with intent to defeat or delay his creditors, done any of the following things, namely departed out of Bermuda, or being out of Bermuda remained out of Bermuda, or departed from his dwelling house, or otherwise absented himself, or begun to keep house; 4. That the debtor has filed in the prescribed manner in the Court a declaration admitting his inability to pay his debts; 5. That execution issued against the debtor on any legal process for the purpose of obtaining payment of not less than fifty pounds has been levied by seizure and sale of his goods; 6. That the creditor presenting the petition has served in the prescribed manner on the debtor a debtor's summons requiring the debtor to pay a sum due, of an amount of not less than fifty pounds, and that the debtor has, for a space of three weeks succeeding the service of such summons, neglected to pay such sum, or to secure or compound for the same. But no person shall be adjudged a bankrupt on any of the above grounds unless the act of bankruptcy on which the adjudication is grounded has occurred within six months before the presentation of the petition for adjudication; moreover, the debt of the petitioning creditor must be a liquidated sum due at law or in equity, and must not be a secured debt, unless the petitioner state in his petition that he will be ready to give up such security for the benefit of the creditors in the event of the debtor being adjudicated a bankrupt, or unless the petitioner is willing to give an estimate of the value of his security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated, but he shall, on an application being made by the trustee within the prescribed period after the date of adjudication, give up his security to such trustee for the benefit of the creditors upon payment of such estimated value.

Imp. §§ 4, 6.

**Proceedings in relation to a debtor's summons.** 4. A debtor's summons may be granted by the Court on a creditor proving to its satisfaction that a debt sufficient to support a petition in bankruptcy is due to him from the person against whom the summons is sought, and that the creditor has failed to obtain payment of his debt after using reasonable efforts to do so. The summons shall be in the prescribed form, resembling, as nearly as circumstances admit, a writ issued by the Court of General Assize. It shall state that in the event of the debtor failing to pay the sum specified in the summons, or to compound for the same to the satisfaction of the creditor, a petition may be presented against him, praying that he may be adjudged a bankrupt. The summons shall have an endorsement thereon to the like effect, or such other prescribed endorsement as may be best calculated to indicate to the debtor the nature of the document served upon him, and the consequences of inattention to the requisitions therein made. Any debtor served with a debtor's summons may apply to the Court in the prescribed manner, and within the prescribed time, to dismiss such summons on the ground that he is not indebted to the creditor serving such summons, or that he is not indebted to such amount as will justify such creditor in presenting a bankruptcy petition against him; and the Court may dismiss the summons, with or without costs, if satisfied with the allegations made by the debtor, or it may, upon such security (if any) being given as the Court may require for payment to the creditor of the debt alleged by him to be due, and the cost of establishing such debt, stay all proceedings on the summons for such time as will be required for the trial of the question relating to such debt



which question may be tried by the Court with or without the assistance of a jury as by this Act provided for.

Imp. § 7.

**Proceedings on petition. 5.** A petition praying that a debtor may be adjudged a bankrupt, in this Act referred to as a bankruptcy petition, shall be served in the prescribed manner. At the hearing the Court shall require proof of the debt of the petitioning creditor, and of the act of bankruptcy, or if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and, if satisfied with such proof, shall adjudge the debtor to be bankrupt. The Court may adjourn the petition, either conditionally or unconditionally, for the procurement of further evidence, or for any other just cause, or may dismiss the petition, with or without costs, as the Court thinks just.

Imp. §§ 4, 7.

**Proceedings if debt of petitioning creditor is contested. 6.** When the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such amount as would justify the petitioner in presenting a bankruptcy petition against him, the Court, upon such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing such debt, may stay all proceedings on the petition for such time as may be required for trial of the question relating to such debt, and such trial shall be had in manner hereinafter provided with respect to disputed debts under debtor's summonses. Where proceedings are stayed the Court may, if by reason of the delay caused by such stay of proceedings or for any other cause it thinks just, adjudge the debtor a bankrupt on the petition of some other creditor, and shall thereupon dismiss, upon such terms as it thinks just, the petition proceedings in which have been stayed as aforesaid.

Imp. § 7 (5, 6).

**Advertisement of order of adjudication. 7.** A copy of an order of the Court adjudging the debtor to be a bankrupt shall be published in the *Gazette* and the date of such order shall be the date of the adjudication for the purposes of this Act, and the production of a copy of the *Gazette* containing such order as aforesaid shall be conclusive evidence in all legal proceedings of the debtor having been duly adjudged a bankrupt, and of the date of the adjudication.

Imp. § 13.

**Definition of commencement of bankruptcy. 8.** The bankruptcy of a debtor shall be deemed to have relation back to and commence at the time of the act of bankruptcy being completed on which the order is made adjudging him to be bankrupt or if the bankrupt is proved to have committed more acts of bankruptcy than one to have relation back to and commence at the time of the first of the acts of bankruptcy that may be proved to have been committed by the bankrupt within twelve months next preceding the order of adjudication, but the bankruptcy shall not relate to any prior act of bankruptcy unless it be that at the time of committing such prior act the bankrupt was indebted to some creditor or creditors in a sum or sums sufficient to support a petition in bankruptcy, and unless such debt or debts are still remaining due at the time of the adjudication.

Imp. § 43.

**Creditors bound by bankruptcy proceedings. 9.** Where a debtor shall be adjudicated a bankrupt no creditor to whom the bankrupt is indebted in respect of any debts provable in the bankruptcy shall have any remedy against the property or person of the bankrupt in respect of such debt except in manner directed by this Act. But this section shall not affect the power of any creditor holding a security upon the property of the bankrupt to realize or otherwise deal with such security in the same manner as he would have been entitled to realize or deal with the same if this section had not been passed.

Imp. § 9 (1).

**Power of Court after presentation of petition to restrain suits, etc., and appoint receiver. 10.** The Court may at any time after the presentation of a bankruptcy petition against the debtor restrain further proceedings in any action, suit, execution, or other legal process against the debtor in respect of any debt provable in bankruptcy or it may allow such proceedings whether in progress at the commencement of the bankruptcy or commenced during its continuance to proceed upon such terms as the Court may think just. The Court may also at any time after the presen-

tation of such petition appoint a receiver or manager of the property or business of the debtor against whom the petition is presented or of any part thereof and may direct immediate possession to be taken of such property or business or any part thereof.

Imp. § 9 (2).

*Appointment of trustee.*

**Meeting of creditors for appointment of persons to administer bankrupt's property. 11.** When an order has been made adjudging a debtor bankrupt, herein referred to as an order of adjudication, the property of the bankrupt shall become divisible amongst his creditors in proportion to the debts proved by them in the bankruptcy and for the purpose of effecting such division the Court shall as soon as may be summon a general meeting of his creditors and the creditors assembled at such meeting shall and may do as follows: 1. They shall by resolution appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt at such remuneration as they may from time to time determine if any; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned; 2. They shall when they appoint a trustee by resolution declare what security is to be given and to whom by the person so appointed before he enters on the office of trustee; 3. They shall by resolution appoint some other fit persons not exceeding three in number and being creditors qualified to vote at such first meeting of creditors as is in this Act mentioned or authorised in the prescribed form by creditors so qualified to vote to form a committee of inspection for the purpose of superintending the administration by the trustee of the bankrupt's property; 4. They may by resolution give directions as to the manner in which the property is to be administered by the trustee and it shall be the duty of the trustee to conform to such directions unless the Court for some just cause otherwise orders.

Imp. §§ 20, 21.

**Description of bankrupt's property divisible among creditors. 12.** The property of the bankrupt divisible among his creditors and in this Act referred to as the property of the bankrupt shall not comprise the following particulars: 1. Property held by the bankrupt on trust for any other person; 2. The tools (if any) of his trade and the necessary wearing apparel and bedding of himself his wife and children to a value inclusive of tools and apparel and bedding not exceeding twenty pounds in the whole. But it shall comprise the following particulars: 3. All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy or may be acquired by or devolve on him during its continuance; 4. The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or during its continuance; 5. All goods and chattels being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt by the consent and permission of the true owner of which goods and chattels the bankrupt is reputed owner or of which he has taken upon himself the sale or disposition as owner: Provided, that things in action other than debts due to him in the course of his trade or business shall not be deemed goods and chattels within the meaning of this clause.

Imp. § 44.

**Regulations as to first meeting of creditors. 13.** The general meeting of creditors to be summoned as aforesaid by the Court and in this Act referred to as the first meeting of creditors shall be held in the prescribed manner and subject to the prescribed regulations as to the quorum, adjournment of meeting, and all other matters relating to the conduct of the meeting or the proceedings thereat. Provided that: 1. The meeting shall be presided over by the Registrar or in the event of his being unable to attend through illness or any unavoidable cause by such chairman as the meeting may elect; 2. A person shall not be entitled to vote as a creditor unless at or previously to the meeting he has in the prescribed manner proved a debt provable under the bankruptcy to be due to him; 3. A creditor shall not vote at the said meeting in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained; 4. A secured creditor shall for the purpose of voting be deemed to be a creditor only in respect of the balance (if any) due to him after deducting the value of his security and the amount of such balance shall until the security be realized be determined in the prescribed manner. He may however



at or previously to the meeting of creditors give up the security to the trustee and thereupon he shall rank as a creditor in respect of the whole sum due to him; 5. A "secured creditor" shall in this Act mean any creditor holding any mortgage, charge, or lien on the bankrupt's estate or any part thereof as security for a debt due to him. 6. Votes may be given either personally or by proxy; 7. An ordinary resolution shall be decided by a majority in value of the creditors present personally or by proxy at the meeting or voting on such resolution; 8. A special resolution shall be decided by a majority in number and three-fourths in value of the creditors present personally or by proxy at the meeting and voting on such resolution.

Imp. § 15, Sched. II.

**Devolution of property on trustee. 14.** Until a trustee is appointed the Registrar shall be the trustee for the purposes of this Act and immediately upon the order of adjudication being made the property of the bankrupt shall vest in the Registrar. On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed. The expression "trustee" when used in this Act shall include the person for the time being filling the office of trustee whether he be the Registrar or not, but when the Registrar holds the office of trustee he shall unless the Court otherwise orders in the administration of the property of the bankrupt apply to the Court for directions as to the mode of administering such property and shall not take possession thereof unless directed by the Court.

Imp. § 54.

**Evidence of appointment of trustee. 15.** The appointment of a trustee shall be reported to the Court and the Court upon being satisfied that the requisite security has been entered into by him shall give a certificate declaring him to be trustee of the bankruptcy named in the certificate and such certificate shall be conclusive evidence of the appointment of the trustee and such appointment shall date from the date of the certificate. When the Registrar holds the office of trustee or when the trustee is changed a like certificate of the Court may be made declaring the person therein named to be trustee and such certificate shall be conclusive evidence of the person therein named being trustee.

## *Part II. Administration of Property.*

### *General provisions.*

**Conduct of bankrupt. 16.** The bankrupt shall to the utmost of his power aid in the realization of his property and the distribution of the proceeds amongst his creditors. He shall produce a statement of his affairs to the first meeting of creditors and shall be publicly examined thereon on a day to be named by the Court and subject to such adjourned public examination as the Court may direct. He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such meetings of his creditors, wait at such times on the trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the trustee, or may be prescribed by rules of Court, or be directed by the Court by any special order or orders made in reference to any particular bankruptcy, or made on the occasion of any special application by the trustee or any creditor. If the bankrupt wilfully fail to perform the duties imposed on him by this section or if he fail to deliver up possession to the trustee of any part of his property which is divisible amongst his creditors under this act, and which may for the time being be in the possession or under the control of such bankrupt, he shall in addition to any other punishment to which he may be subject be guilty of a contempt of Court and may be punished accordingly.

Imp. § 24.

**Conduct of trustee and appeal to Court against trustee. 17.** The trustee shall in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors have regard to any directions that may be given by resolution of the creditors at any general meeting or by the committee of inspection and any directions so given by the creditors at any general meeting shall be deemed to override any directions given by the committee of inspection; the trustee shall call a meeting of the committee of inspection once at least every three months,

when they shall audit his accounts, and determine whether any or what dividend is to be paid; he may also call special meetings of the said committee as he thinks necessary. Subject to the provisions of this Act and to such directions as aforesaid the trustee shall exercise his own discretion in the management of the estate and its distribution amongst the creditors. The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes; he may also apply to the Court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy. The bankrupt or any creditor, debtor, or other person aggrieved by any act of the trustee may apply to the Court, and the Court may confirm, reverse, or modify the act complained of and make such order in the premises as it may think just. The Court may from time to time during the continuance of bankruptcy summon general meetings of the creditors for the purpose of ascertaining their wishes, and may, if the Court thinks fit, direct the Registrar to preside at such meetings. The trustee shall in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt be in the same position in all respects as if he were a receiver of such property appointed by the Court of Chancery, and the Court may on his application enforce such acquisition or retention of property accordingly.

Imp. § 104.

**Regulations as to general meetings of creditors subsequent to first meeting.**

18. The provisions of this Act with respect to the first general meeting of creditors shall apply to any subsequent general meeting of creditors in a bankruptcy with this exception that subsequent meetings of creditors may be summoned by the trustee, or by a member of the committee of inspection and that such meetings may, unless otherwise directed by the Court, in the case of meetings summoned by the Court, be presided over by any person chosen by the creditors assembled at such meeting, and that any creditor whose debt has been proved or the value of whose debt has been ascertained at or subsequently to such first meeting shall be allowed to be present and to vote thereat.

*Dealings with bankrupt's property.*

**Possession of property by trustee.** 19. Where any portion of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the right to transfer such property shall be absolutely vested in the trustee to the same extent as the bankrupt might have exercised the same if he had not become bankrupt. Where any portion of such estate consists of Crown land or glebe land the trustee may deal with the same manner as the bankrupt himself but for his bankruptcy might do. By Crown land shall be meant land held subject to a quit rent commonly so called. By glebe land shall be meant land held under any sale of glebe land under any Act of the Legislature. Where any portion of the property of the bankrupt consists of things in action any action, suit, or other proceeding for the recovery of such things instituted by the trustee shall be instituted in his official name as in this Act provided; and such things shall for the purpose of such action, suit, or other proceeding be deemed to be assignable in law and to have been duly assigned to the trustee in his official capacity. The trustee shall as soon as may be take possession of the deeds, books, and documents of the bankrupt and all other property capable of manual delivery. The trustee shall keep in such manner as rules of Court shall direct proper books in which he shall from time to time make or cause to be made entries or minutes of proceedings at meetings, and of such other matters as rules of Court shall direct, and any creditor of the bankrupt may subject to the control of the Court personally or by his agent inspect such books.

Imp. § 56.

**Disclaimer as to onerous property.** 20. When any property of the bankrupt acquired by the trustee under this Act consists of land of any tenure burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of any other property that is unsaleable or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding he has endeavoured to sell or has taken possession of such property or exercised any act of ownership in relation thereto, may, by writing under his hand, disclaim such property, and upon the execution of such disclaimer the property disclaimed shall, if the same



is a contract be deemed to be determined from the date of the order of adjudication, and if the same is a lease be deemed to have been surrendered on the same date, and if the same be shares in any company be deemed to be forfeited from that date, and if any other species of property it shall revert to the person entitled on the determination of the estate or interest of the bankrupt; but if there shall be no person in existence so entitled then in no case shall any estate or interest therein remain in the bankrupt. Any person interested in any disclaimed property may apply to the Court, and the Court may upon such application order possession of the disclaimed property to be delivered up to him, or make such other order as to the possession thereof as may be just. Any person injured by the operation of this section shall be deemed a creditor of the bankrupt to the extent of such injury and may accordingly prove the same as a debt under the bankruptcy.

Imp. § 55.

**Limitation of time for disclaimer. 21.** The trustee shall not be entitled to disclaim any property in pursuance of this Act in cases where an application in writing has been made to him by any person interested in such property requiring such trustee to decide whether he will disclaim or not, and the trustee has for a period of not less than twenty-eight days after the receipt of such application or such further time as may be allowed by the Court declined or neglected to give notice whether he disclaims the same or not.

Imp. § 55 (4).

**Power of trustee to deal with property. 22.** Subject to the provisions of this Act, the trustee shall have power to do the following things: 1. To receive and decide upon proof of debts in the prescribed manner and for such purpose to administer oaths; 2. To carry on the business of the bankrupt so far as may be necessary for the beneficial winding, — up of the same; 3. To bring or defend any action, suit, or other legal proceeding relating to the property of the bankrupt; 4. To deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with the same; and the several Acts of the Legislature of these Islands enabling the holders in fee-tail of lands in these Islands to alter the tenure of the same to fee-simple shall extend and apply to proceedings in bankruptcy under this Acts as if those Acts were here reenacted and made applicable in terms to such proceedings; 5. To exercise any powers the capacity to exercise which is vested in him under this Act and to execute all powers of attorney, deeds, and other instruments expedient or necessary for the purpose of carrying into effect the provisions of this Act; 6. To sell all the property of the bankrupt (including the good will of the business if any and the book debts due or growing due to the bankrupt) by public auction or private contract with power if he thinks fit to transfer the whole thereof to any person or company or to sell the same in parcels; 7. To give receipts for any money received by him which receipt shall effectually discharge the person paying such moneys from all responsibility in respect of the application thereof; 8. To prove, rank, claim, and draw a dividend in the matter of the bankruptcy, or sequestration, of any debtor of the bankrupt.

Imp. § 56.

**Power to allow bankrupt to manage property. 23.** The trustee may appoint the bankrupt himself to superintend the management of the property or of any part thereof or to carry on the trade of the bankrupt (if any) for the benefit of the creditors and in any other respect to aid in administering the property in such manner and on such terms as the creditors direct.

Imp. § 64.

**Power of trustee to compromise. 24.** The trustee may, with the sanction of the committee of inspection, do all or any of the following things: 1. Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts; 2. Refer any dispute to arbitration, compromise all debt, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist, between the bankrupt and any debtor or person who may have incurred any liability to the bankrupt, upon the receipt of such sums, payable at such times, and generally upon such terms, as may be agreed upon; 3. Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy. 4. Make such compromise

or other arrangement as may be thought expedient with respect to any claim arising out of, or incidental to, the property of the bankrupt, made or capable of being made, on the trustee by any person, or by the trustee on any person; 5. To divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature, or other special circumstances, can not advantageously be realised by sale. The sanction given for the purposes of this section may be a general permission to do all or any of the above mentioned things or a permission to do all or any of them in any specified case or cases.

Imp. § 57.

**Power of trustee to accept composition or general scheme of arrangement.**

**25.** The trustee may, with the sanction of a special resolution of the creditors assembled at any meeting of which notice has been given specifying the object of such meeting, accept any composition offered by the bankrupt, or assent to any general scheme of settlement of the affairs of the bankrupt, upon such terms as may be thought expedient, and with or without a condition that the order of adjudication is to be annulled, subject nevertheless to the approval of the Court, to be testified by the Judge of the Court signing the instrument containing the terms of such composition, or scheme, or embodying such terms in an order of the Court. Where the annulling the order of adjudication is made a condition of any composition with the bankrupt or of any general scheme for the liquidation of his affairs the Court if it approves of such composition or general scheme shall annul the adjudication on an application made by or on behalf of any person interested, and the adjudication shall be annulled from and after the date of the order of annulling the same. The provisions of any composition or general scheme made in pursuance of this Act may be enforced by the Court on a motion made in a summary manner by any person interested, and any disobedience of the order of the Court made on such motion shall be deemed to be a contempt of Court. The approval of the Court shall be conclusive as to the validity of any such composition or scheme, and it shall be binding on all the creditors so far as relates to any debts due to them and provable under the bankruptcy.

**Trustee, if a solicitor, may be paid for services. 26.** A trustee shall not without the consent of the committee of inspection employ a solicitor or other agent; but where the trustee is himself a solicitor he may contract to be paid a certain sum by way of percentage or otherwise as a remuneration for his services as trustee including all professional services; and any such contract shall notwithstanding any law to the contrary be lawful.

Imp. § 73 (2).

**Trustee to pay moneys into bank. 27.** The trustee shall pay all sums from time to time received by him to such person or persons as the majority of the creditors in number and value at any general meeting shall appoint; and if he at any time keep in his hands any sum exceeding fifty pounds for more than ten days he shall be subject to the following liabilities, that is to say: 1. He shall pay interest at the rate of twenty pounds per centum per annum on the excess of such sum above fifty pounds as he may retain in his hands; 2. Unless he can prove to the satisfaction of the Court that his reason for retaining the money was sufficient he shall on the application of any creditor be dismissed from his office by the Court, and shall have no claim for remuneration, and be liable to any expenses to which the creditors may be put by or in consequence of his dismissal.

Imp. § 75.

*Payment of debts and distribution of assets.*

**Description of debts provable in bankruptcy. 28.** Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise shall not be provable in bankruptcy and no person having notice of any act of bankruptcy available for adjudication against the bankrupt shall prove for any debt or liability contracted by the bankrupt subsequently to the date of his so having notice. Save as aforesaid all debts and liabilities, present or future, certain or contingent, to which the bankrupt is subject at the date of the order of adjudication or to which he may become subject during the continuance of the bankruptcy by reason of any obligation incurred previously to the date of the order of adjudication shall be deemed to be debts provable in bankruptcy and may be proved in the prescribed manner before the trustee in the bankruptcy. An estimate shall be made accord-



ing to the rules of the Court for the time being in force so far as the same may be applicable and where they are not applicable at the discretion of the trustee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies or for any other reason does not bear a certain value. Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court and the Court may if it think the value of the debt or liability incapable of being fairly estimated make an order to that effect and upon such order being made such debt or liability shall for the purposes of this Act be deemed to be a debt not provable in bankruptcy; but if the Court think that the value of the debt or liability is capable of being fairly estimated it may direct such value to be assessed with the consent of all the parties interested before the Court itself without the intervention of a jury or if such parties do not consent by a jury of six qualified persons to be summoned by the Court in a summary manner for the purpose and may give all necessary directions for such purpose and the amount of such value when assessed shall be provable as a debt under the bankruptcy. "Liability" shall for the purposes of this Act include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking whether such breach does or does not occur, or is or is not likely to occur, or capable of occurring before the close of the bankruptcy, and generally it shall include any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of money or money's worth whether such payment be as respects amount fixed or unliquidated; as respects time present or future, certain or dependent on any one contingency, or on two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules, or assessable only by a jury, or as a matter of opinion.

Imp. § 37.

**Preferential debts. 29.** The debts hereinafter mentioned shall be paid in priority to all other debts. Between themselves such debts shall rank equally and shall be paid in full unless the property of the bankrupt is insufficient to meet them in which case they shall abate in equal proportions between themselves, that is to say: 1. All parochial or other local rates and taxes due from him at the date of the order of adjudication and having become due and payable within twelve months next before such time; 2. All wages or salary of any clerk or servant in the employment of the bankrupt at the date of the order of adjudication not exceeding six months' wages or salary and not exceeding fifty pounds; all wages of any labourer or workman in the employment of the bankrupt at the date of the order of adjudication and not exceeding two months' wages. Save as aforesaid all debts provable under the bankruptcy shall be paid *pari passu*.

Imp. 51 & 52 Vic. c. 62, § 1.

**Preferential claims in case of apprenticeship. 30.** Where at the time of the presentation of the petition for adjudication any person is apprenticed or is an articulated clerk to the bankrupt the order of adjudication shall if either the bankrupt or apprentice or clerk give notice in writing to the trustee to that effect be a complete discharge of the indenture of apprenticeship or articles of agreement, and if any money has been paid by or on behalf of such apprentice or clerk to the bankrupt as a fee the trustee may on the application of the apprentice or clerk or of some person on his behalf pay such sum as such trustee subject to an appeal to the Court thinks reasonable out of the bankrupt's property to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy and to the other circumstances of the case. Where it appears expedient to a trustee he may on the application of any apprentice or articulated clerk to the bankrupt or any person acting on behalf of such apprentice or articulated clerk instead of acting under the preceding provisions of this section transfer the indenture of apprenticeship or articles of agreement to some other person.

Imp. § 41.

**Power of landlord to distrain for rent. 31.** The landlord or other person to whom any rent is due from the bankrupt may at any time either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt, in the manner allowed by law, for the rent due to him from the bank-

rupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy it shall be available only for one year's rent accrued due prior to the date of the order of adjudication; but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the overplus due for which the distress may not have been available.

Imp. § 42.

**Proof in case of rent and parochial payment. 32.** When any rent or other payment falls due at stated periods and the order of adjudication is made at any time other than one of such periods the person entitled to such rent or payment may prove for a proportionate part thereof up to the day of adjudication as if such rent or payment grew due from day to day.

Imp. Sched. II, § 19.

**Interest on debts. 33.** Interest on any debt provable in bankruptcy may be allowed by the trustee under the same circumstances in which interest would have been allowable by a jury if an action had been brought for such debt.

Imp. Sched. II, § 20.

**Proof in respect of distinct contracts. 34.** If any bankrupt is at the date of the order of adjudication, liable in respect of distinct contracts as member of two or more distinct firms, or as a sole contractor and also as member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts against the properties respectively liable under such contracts.

Imp. Sched. II, § 18.

**Allowance to bankrupt for maintenance or service. 35.** The trustee with the consent of the creditors, testified by a resolution passed in general meeting, may from time to time during the continuance of the bankruptcy make such allowance as may be approved by the creditors to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate.

Imp. § 64 (2).

**Set off. 36.** Where there have been mutual credits, mutual debts, or other mutual dealings between the bankrupt and any other person proving or claiming to prove a debt under his bankruptcy an account shall be taken of what is due from the one party to the other in respect of such mutual dealings and the sums due from the one party shall be set off against any sum due from the other party, and the balance of such account and no more shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set off against the property of a bankrupt in any case where he had at the time of giving credit to the bankrupt notice of an act of bankruptcy committed by such bankrupt and available against him for adjudication.

Imp. § 38.

**Provisions as to secured creditors. 37.** A creditor holding a specific security on the property of the bankrupt or any part thereof may on giving up his security prove for his whole debt. He shall also be entitled to a dividend in respect of the balance due to him after realizing or giving credit for the value of his security in manner and at the time prescribed. A creditor holding such security as aforesaid and not complying with the foregoing conditions shall be excluded from all share in any dividend.

**Distribution of dividends. 38.** The trustee shall from time to time when the committee of inspection determines declare a dividend amongst the creditors who have proved to his satisfaction debts provable in bankruptcy, and shall distribute the same accordingly and in the event of his not declaring a dividend for the space of six months he shall summon a meeting of the creditors and explain to them his reasons for not declaring the same.

Imp. § 58.

**Provisions for creditors residing at a distance, etc. 39.** In the calculation and distribution of a dividend it shall be obligatory on the trustee to make provision for debts provable in bankruptcy appearing from the bankrupt's statements or otherwise to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not



had sufficient time to tender their proofs or to establish them if disputed and also for debts provable in bankruptcy the subject of claims not yet determined.

Imp. § 60.

**Right of creditor who has not proved debt before declaration of dividend. 40.**

Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any moneys for the time being in the hand of the trustee any dividend or dividends he may have failed to receive before such moneys are made applicable to the payment of any future dividend or dividends but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Imp. § 61.

**Final dividend. 41.** When the trustee has converted into money all the property of the bankrupt or so much thereof as can in the joint opinion of himself and of the committee of inspection be realized without needlessly protracting the bankruptcy he shall declare a final dividend and give notice of the time at which it will be distributed.

Imp. § 62.

**Bankrupt entitled to surplus. 42.** The bankrupt shall be entitled to any surplus remaining after payment of his creditors and of the costs, charges, and expenses of the bankruptcy.

Imp. § 65.

**No action for dividend. 43.** No action or suit for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the Court may if it thinks fit order the trustee to pay the same and also to pay out of his own moneys interest thereon for the time that it is withheld and the costs of the application.

Imp. § 63.

*Close of bankruptcy.*

**Close of bankruptcy. 44.** When the whole property of the bankrupt has been realized for the benefit of his creditors or so much thereof as can in the joint opinion of the trustee and committee of inspection be realized without needlessly protracting the bankruptcy, or a composition or arrangement has been completed, the trustee shall make a report accordingly to the Court and the Court if satisfied that the whole of the property of the bankrupt has been realized for the benefit of his creditors, or so much thereof as can be realized without needlessly protracting the bankruptcy, or that a composition or arrangement has been completed, shall make an order that the bankruptcy has closed and the bankruptcy shall be deemed to have closed at and after the date of such order. A copy of the order closing the bankruptcy may be published in the *Gazette* and the production of a copy of such *Gazette* containing a copy of the order shall be conclusive evidence of the order having been made and of the date and contents thereof.

Imp. § 82.

*Discharge of bankrupt.*

**Order of discharge. 45.** When a bankruptcy is closed or at any time during its continuance with the assent of the creditors testified by a special resolution the bankrupt may apply to the Court for an order of discharge; but such discharge shall not be granted unless it is proved to the Court that one of the following conditions has been fulfilled, that is to say, either that a dividend of not less than ten shillings in the pound has been paid out of his property, or might have been paid except through the negligence or fraud of the trustee, or that a special resolution of his creditors has been passed to the effect that his bankruptcy or the failure to pay ten shillings in the pound has in their opinion arisen from circumstances for which the bankrupt can not justly be held responsible and that they desire that an order of discharge should be granted to him; and the Court may suspend for such time as it deems to be just or withhold altogether the order of discharge in the circumstances following; namely, if it appears to the Court on the representation of the creditors made by special resolution of the truth of which representation the Court is satisfied, or by other sufficient evidence, that the bankrupt has made default in giving up to his creditors the property which he is required by this Act to give up; or that a prosecution has been commenced against him in pursuance of the provision relative to the punishment of fraudulent debtors contained in the

*Debtors Act, 1876.* in respect of any offence alleged to have been committed by him against that Act.

Imp. § 28.

**Effect of order of discharge. 46.** An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or breach of trust nor from any debt or liability whereof he has obtained forbearance by any fraud but it shall release the bankrupt from all other debts provable under the bankruptcy with the exception of: 1. Debts due to the Crown; 2. Debts with which the bankrupt stands charged at the suit of the Crown or of any person for any offence against a statute relating to any branch of the Public Revenue or at the suit of the Provost Marshal General or other Public Officer on a bail bond entered into for the appearance of any person prosecuted for any such offence. And he shall not be discharged from such excepted debts unless the Governor of these Islands by and with the advice and consent of Her Majesty's Council certify in writing his consent to his being discharged therefrom. An order of discharge shall be sufficient evidence of the bankruptcy and of the validity of the proceedings thereon and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by such order the bankrupt may plead that the cause of action occurred before his discharge and may give this Act and the special matter in evidence.

Imp. § 30 (1-3).

**Exception of joint debtors. 47.** The order of discharge shall not release any person who at the date of the order of adjudication was a partner with the bankrupt or was jointly bound, or had made any joint contract with him.

Imp. § 30 (4).

#### *Release of trustee.*

**Release of trustee. 48.** When the bankruptcy is closed the trustee shall call a meeting of the creditors to consider an application to be made to the Court for his release. At the meeting the trustee shall lay before the assembled creditors an account shewing the manner in which the bankruptcy has been conducted with a list of the unclaimed dividends, if any outstanding, and shall inform the meeting that he proposes to apply to the Court for a release. The creditors assembled at the meeting may express their opinion as to the conduct of the trustee and they or any of them may appear before the Court and oppose the release of the trustee. The Court after hearing what if anything can be urged against the release of the trustee shall grant or withhold the release accordingly, and if it withhold the release shall make such order as it thinks just charging the trustee with the consequences of any act or default he may have done or made, contrary to his duty, and shall suspend his release until such charging order has been complied with and the Court thinks just to grant the release of the trustee.

Imp. § 82 (1, 2).

**Duty of trustee as to unclaimed dividends and outstanding property. 49.** Unclaimed dividends and any other monies arising from the property of the bankrupt remaining under the control of the trustee at the close of the bankruptcy of any bankrupt or accruing thereafter shall be paid into the Public Treasury of these Islands, and any parties entitled thereto may claim the same in manner directed by the rules of the Court, the Receiver General being entitled to deduct therefrom a commission of sixpence in the pound on paying out the same. The trustee shall also deliver a list of any outstanding property of the bankrupt to the prescribed persons and the same shall when practicable be got in and applied for the benefit of the creditors in manner prescribed.

**Effect of release of trustee. 50.** The order of the Court releasing the trustee of a bankruptcy shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt or otherwise in relation to his conduct as trustee of such bankrupt, but such order may be revoked by the Court on proof that it was obtained by fraud.

Imp. § 82 (3).

#### *Status of undischarged bankrupt.*

**Status of undischarged bankrupt. 51.** Where a person who has been made bankrupt has not obtained his discharge then, from and after the close of his bankruptcy the following consequences shall ensue: 1. No portion of a debt provable under



the bankruptcy shall be enforced against the property of the person so made bankrupt until the expiration of three years from the close of the bankruptcy, and during that time if he pay to his creditors such additional sum as will with the dividends paid out of his property during the bankruptcy make up ten shillings in the pound he shall be entitled to an order of discharge in the same manner as if a dividend of ten shillings in the pound had originally been paid out of his property; 2. At the expiration of a period of three years from the close of the bankruptcy if the debtor made bankrupt has not obtained an order of discharge any balance remaining unpaid in respect of any debt proved in such bankruptcy (but without interest in the meantime) shall be deemed to be a subsisting debt in the nature of a judgment debt and subject to the rights of any persons who have become creditors of the debtor since the close of his bankruptcy may be enforced against any property of the debtor with the sanction of the Court but to the extent only and at the time and in manner directed by such Court and after giving such notice and doing such acts as may be prescribed in that behalf.

#### *Audit.*

**Registrar to be auditor. 52.** The trustee having had his quarterly statement of accounts audited by the committee of inspection shall within the prescribed time forward the certified statement in the prescribed form to the Registrar.

Imp. § 78 (1, 2).

**Return of accounts to Registrar. 53.** Every trustee of a bankrupt shall from time to time as may be prescribed and not less than once in every year during the bankruptcy transmit to the Registrar a statement showing the proceedings in such bankruptcy up to the date of the statement containing the prescribed particulars and made out in the prescribed form and any trustee failing to transmit accounts in compliance with this section shall be deemed guilty of a contempt of Court and be punishable accordingly.

Imp. § 81.

**Duty of Registrar. 54.** The Registrar shall examine the statements transmitted to him and shall call the trustee to account for any misfeasance, neglect, or omission which may appear on such statements and may require the trustee to make good any loss the estate of the bankrupt may have sustained by such misfeasance, neglect, or omission. If the trustee fail to comply with such requisition of the Registrar the Registrar may report the same to the Court, and the Court, after hearing the explanation if any of the trustee, shall make such order in the premises as it thinks just.

**Powers of Registrar. 55.** The Registrar may at any time require any trustee to answer any inquiry made by him in relation to any bankruptcy in which such trustee is engaged, and may if he think fit apply to the Court to examine on oath such trustee, or any other person, concerning such bankruptcy; he may also direct an investigation to be made of the books and vouchers of the trustees.

### *Part III. Constitution and Powers of Court.*

#### *Description of Court.*

**Court of General Assize to be the Court of bankruptcy. 56.** The Court of General Assize shall constitute the Court of bankruptcy for the execution and purposes of this Act; and every Judge of the Court of General Assize shall be a Judge of the Court of bankruptcy and the Court shall sit on application to the Chief Justice or in his absence the senior Assistant Justice whenever the business shall require it.

The jurisdiction is now vested in the Supreme Court. — Act No. 4 of 1905, § 3.

**Court to be a Court of record. 57.** The Court shall for the purposes of jurisdiction in bankruptcy be a Court of law and of equity and a Court of record.

**General power of the Court. 58.** Subject to the provisions of this Act the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, arising in any case of bankruptcy coming within the cognizance of such Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice, or making a complete distribution of property, in any such case; and the Court shall not be subject to be restrained in the execution of its powers under this Act by the order of any other Court, nor shall any appeal lie from its decision except in manner directed by this

Act; and if in any proceeding in bankruptcy there arises any question of fact which the parties desire to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may direct such trial to be had, and such trial may be had accordingly, in the Court before a jury of six persons qualified by law to serve as jurors in the Court of General Assize to be summoned in a summary manner by order of the Court and sworn and empanelled for the trial of the question which they are summoned to try.

[59—60 are repealed.]

**Commitment to prison. 61.** When the Court commits any person to prison the commitment may be to such prison as the Court thinks expedient, and if the gaoler of any prison refuse to receive any prisoner so committed he shall be liable for every such refusal to a penalty not exceeding one hundred pounds.

#### *Rules of Court.*

**General rules to be made by the Court. 62.** The Court may from time to time make, and may from time to time revoke and alter, general rules, in this Act described as rules of Court, for the effectual execution of this Act, and of the objects thereof, and the regulation of the practice and procedure of bankruptcy petitions and the proceedings therein; and such rules shall go into force after being sanctioned by the Governor and Council and shall continue in force until revoked or altered with their consent. Any general rules made as aforesaid, may prescribe regulations as to the service of bankruptcy petitions, including provisions for substituted service; as to the valuation of any debts provable in a bankruptcy; as to the valuation of securities held by creditors; as to the giving or withholding interest or discount on or in respect of debts or dividends; as to the funds out of which costs are to be paid, the order of payment, and the amount and taxation thereof; and as to any other matter or thing whether similar or not to those above enumerated, in respect of which it may be expedient to make rules for carrying into effect the objects of this Act; and any rules made and sanctioned as aforesaid shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act.

Imp. § 127. The Rules of Court in force at the time of the commencement of the *Supreme Court Act, 1905*, were not affected by that Act. — Act No. 4 of 1905, § 14.

**Power to administer oaths. 63.** Every Judge and Registrar of the Court and every person appointed by the Court a Commissioner to receive oaths in bankruptcy or in such cases as are allowed by law, solemn declarations instead of oaths, shall have power to administer oaths or solemn declarations in all matters and proceedings in bankruptcy or preliminary or preparatory to any proceeding in bankruptcy.

[64—65 are repealed.]

**Fees to Judges and officers. 66.** Jurors sworn in the Court shall be allowed such remuneration as is allowed by law to jurors serving in the Court of General Assize. The officers and solicitors of the Court shall in all business transacted by them be allowed such fees to be paid by the parties as shall be prescribed by the Court and sanctioned by the Legislature.

Imp. §§ 128, 129.

[67 is repealed.]

### *Part IV. Supplemental Provisions.*

#### *As to proceedings.*

**Supplemental regulations as to proceedings in bankruptcy. 68.** The following regulations shall be made with respect to proceedings in bankruptcy, namely: 1. Every bankruptcy petition shall be accompanied by an affidavit of the petitioner in the prescribed form verifying the statements contained in such petition; 2. Where two or more bankruptcy petitions are presented against the same debtor or against debtors being members of the same partnership the Court may consolidate the proceedings or any of them upon such terms as the Court thinks fit; 3. A corporation may prove a debt, vote, and otherwise act in bankruptcy by an agent duly authorized under the seal of the corporation; 4. A creditor may in the prescribed manner by instrument in writing appoint a person to represent him in all matters relating to any debtor or his affairs in which a creditor is concerned in pursuance of this Act and such representative shall thereupon for all the purposes of this Act



stand in the same position as the creditor who appointed him; 5. When a debtor who has been adjudicated a bankrupt dies the Court may order that the proceedings in the matter be continued as if he were alive; 6. The Court may at any time on proof to its satisfaction that proceedings in bankruptcy ought to be stayed, by reason that negotiations are pending for the liquidation of the affairs of the bankrupt by arrangement, or for the acceptance of a composition by the creditors in pursuance of the provisions hereinafter contained, or on proof to its satisfaction of any other sufficient reason for staying the same, make an order staying the same either altogether or for a limited time, on such terms and subject to such conditions, as the Court may think just.

Imp. § 105.

**Consequences of annulling of adjudication. 69.** Whenever any adjudication in bankruptcy is annulled, all sales, and disposition of property, and payments duly made, and all acts theretofore done by the trustee, or any person acting under his authority, or by the Court, shall be valid; but the property of the debtor who was adjudged a bankrupt shall in such case vest in such person as the Court may appoint, or in default of any such appointment revert to the bankrupt for all his estate or interest therein, upon such terms and subject to such conditions if any as the Court may declare by order. A copy of the order of the Court annulling the adjudication of a debtor as a bankrupt shall be forthwith published in the *Gazette* and the production of a copy of the *Gazette* containing such order shall be conclusive evidence of the fact of the adjudication having been annulled and of the terms of the order annulling the same.

Imp. § 132.

**Formal defects not to invalidate proceedings. 70.** No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity unless the Court before which an objection is made to such proceeding is of opinion that substantial injustice has been caused by such defect or irregularity and that such injustice can not be remedied by any order of such Court.

Imp. § 143.

*As to trustee and committees of inspection.*

**Regulations of the trustees, etc. 71.** The following regulations shall be made with respect to the trustee and committee of inspection: 1. The creditors may if they think fit appoint more persons than one to the office of trustee, and where more than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee" and shall be joint tenants of the property of the bankrupt. The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee; 2. If any vacancy occur in the office of trustee by death, resignation, or otherwise the creditors in general meeting for the purpose of filling up such vacancy may be convened by the continuing trustee if there be more than one or by the Registrar on the requisition of any creditor. 3. If through any cause whatever there is no trustee acting during the continuance of a bankruptcy the Registrar of the Court for the time being having jurisdiction in the bankruptcy shall act as such trustee; 4. The Court may upon cause shown remove any trustee. The creditors may be special resolution at a meeting specially called for that purpose, of which seven days' notice has been given, remove the trustee and appoint another person to fill his office, and the Court shall give a certificate declaring him to be the trustee; 5. If a trustee be adjudged bankrupt he shall cease to be trustee, and the Registrar shall if there be no other trustee call a meeting of creditors for the appointment of another trustee in his place; 6. The property of the bankrupt shall pass from trustee to trustee, including under that term the Registrar when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office without any conveyance, assignment, or transfer whatever; 7. The trustee of a bankrupt may sue and be sued by the official name of "The Trustee of the property of a bankrupt," inserting the name of the bankrupt, and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding upon himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office; 8. The certificate of appointment of a trustee shall for all purposes of any law in force in these Islands requiring re-

gistration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property and may be registered, enrolled, and recorded accordingly; 9. Any member of the committee of inspection may resign his office by notice in writing signed by him and delivered to the trustee; 10. The creditors may by resolution fix the quorum required to be present at a meeting of the committee of inspection; 11. Any member of the committee of inspection may also be removed by a special resolution at any meeting of creditors of which the prescribed notice has been given stating the object of the meeting; 12. On any vacancy occurring in the office of a member of the committee of inspection by removal, death, resignation, or otherwise the trustee shall convene a meeting of creditors for the purpose of filling up such vacancy; 13. The continuing members of the committee of inspection may act notwithstanding any vacancy in their body and where the number of members of the committee of inspection is for the time being less than five the creditors may increase that number so that it do not exceed five; 14. No defect or irregularity in the election of a trustee or of a member of the committee of inspection shall vitiate any act bona fide done by him; and no act or proceeding of the trustee or of the creditors shall be invalid by reason of any failure of the creditors to elect all or any members of the committee of inspection; 15. If a member of the committee of inspection become a bankrupt his office shall thereupon become vacant; 16. Where there is no committee of inspection any act or thing, or any direction or consent by this Act authorized or required to be done or given by such committee may be done or given by the Court on the application of the trustee.

Imp. §§ 21, 22.

**Power of Court on failure of creditors to appoint trustee. 72.** The Registrar may adjourn the first meeting of creditors from time to time and from place to place subject to the directions of the Court; but if at such first meeting of creditors or at any such adjournment thereof no trustee is appointed by reason of the prescribed quorum not being present or for any other reason whatever the Court may annul the adjudication unless it deems it expedient to carry on the bankruptcy with the aid of the Registrar as trustee. Moreover if any time during the bankruptcy no new trustee is appointed to fill a vacancy in that office the Court may either carry on the bankruptcy with the aid of the Registrar as trustee or annul the order of adjudication as it thinks just.

*As to power over bankrupt.*

**Arrest of bankrupt under certain circumstances. 73.** The Court may by warrant addressed to any constable or prescribed officer of the Court cause a debtor to be arrested and any books, papers, money, goods, and chattels in his possession to be seized and him and them to be safely kept as prescribed until such time as the Court may order under the following circumstances: 1. If after a petition of bankruptcy is presented against such debtor it appear to the Court that there is probable reason for believing that he is about to go abroad, or to quit his place of residence with a view of avoiding service of the petition, or of avoiding appearing to the petition, or of avoiding examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings in bankruptcy; 2. If after a petition in bankruptcy has been presented against such debtor it appear to the Court that there is probable cause for believing that he is about to remove his goods or chattels with a view of preventing or delaying such goods or chattels being taken possession of by the trustee, or that there is probable ground for believing that he has concealed, or is about to conceal, or destroy, any of his goods or chattels, or any books, documents, or writings which might be of use to his creditors in the course of his bankruptcy; 3. If after the service of the petition on such debtor or after an adjudication in bankruptcy against him he remove any goods or chattels in his possession above the value of five pounds without the leave of the trustee, or if without good cause shewn he fails to attend any examination ordered by the Court.

Imp. § 25 (1).

**Proceeds of sale and seizure of goods. 74.** Where the goods of any person have been taken in execution in respect of a judgment for a sum exceeding fifty pounds and sold, the Provost Marshal General or other officer holding the proceeds of such goods shall retain the proceeds of such sale in his hands for a period of fourteen days and upon notice being served on him within that period of a bankruptcy peti-



tion having been presented against such person shall hold the proceeds of such sale after deducting expenses on trust to pay the same to the trustee; but if no notice of such petition having been presented be served on him within such period of fourteen days, or if such notice having been served the person against whom the petition has been presented is not adjudged a bankrupt on such petition or on any other petition of which the Provost Marshal General or other officer has notice, he may deal with the proceeds of such sale in the same manner as he would have done had no notice of the presentation of a bankruptcy petition been served on him.

**Appropriation of portion of pay of officers to creditors. 75.** Where a bankrupt is or has been an officer of the army or navy, or an officer or clerk, or otherwise employed or engaged in the civil service of the Crown, or is in the enjoyment of any pension or compensation granted by the Treasury or payable out of the Public Treasury of these Islands, the trustee during the bankruptcy, and the Registrar after the close of the bankruptcy, shall receive for distribution amongst the creditors so much of the bankrupt's pay, half-pay, salary, emolument, or pension as the Court upon the application of the trustee thinks just and reasonable to be paid in such manner and at such times as the Court, with the consent in writing of the chief officer of the Department under which the pay, half-pay, salary, emolument, pension, or compensation is enjoyed directs.

Imp. § 53 (1).

**Appropriation of portion of salary to creditors. 76.** Where a bankrupt is in the receipt of a salary or income other than as aforesaid the Court upon the application of the trustee shall from time to time make such order as it thinks just for the payment of such salary or income or of any part thereof to the trustee during the bankruptcy and to the Registrar if necessary after the close of the bankruptcy to be applied by him in such manner as the Court may direct.

Imp. § 53 (2).

**Avoidance of voluntary settlements. 77.** Any settlement of property made by any person not being a settlement made before and in consideration of marriage, or made in favor of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settler of property which has accrued to the settler after marriage in right of his wife, shall, if the settler becomes bankrupt within two years after the date of such settlement, be void as against the trustee of the bankrupt appointed under this Act, and shall, if the settler becomes bankrupt at any subsequent time within ten years after the date of such settlement, unless the parties claiming under such settlement can prove that the settler was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement be void against such trustee. Any covenant or contract made by any person in consideration of marriage for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest whether vested or contingent in possession or remainder and not being money or property of or in right of his wife, shall upon his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his trustee appointed under this Act. "Settlement" shall for the purposes of this section include any conveyance or transfer of property.

Imp. § 47.

**Avoidance of fraudulent preferences. 78.** Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered, by any person unable to pay his debts as they become due from his own moneys in favour of any creditor, or any person in trust for any creditor with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same become bankrupt within three months after the date of making, taking, paying, or suffering the same be deemed fraudulent and void as against the trustee of the bankrupt appointed under this Act; but this section shall not affect the rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration.

Imp. § 48.

**Payment of money by agents to trustee. 79.** Any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee

all moneys and securities in his possession or power as such officer or agent, if he be not by law entitled to retain as against the bankrupt or the trustee; if he do not he shall be guilty of a contempt of Court, and may be punished accordingly on the application of the trustee.

**Protection of certain transactions with bankrupt. 80.** Nothing in this Act contained shall render invalid: 1. Any payment made in good faith and for value received to any bankrupt before the date of the order of adjudication by a person not having at the time of such payment notice of any act of bankruptcy committed by the bankrupt and available against him for adjudication; 2. Any payment or delivery of money or goods belonging to a bankrupt made to such bankrupt by a depository of such money or goods before the date of the order of adjudication who had not at the time of such payment or delivery notice of any act of bankruptcy committed by the bankrupt and available against him for adjudication; 3. Any contract or dealing with any bankrupt made in good faith and for valuable consideration before the date of the order of adjudication by a person not having at the time of making such contract or dealing notice of any act of bankruptcy committed by the bankrupt and available against him for adjudication.

Imp. § 49.

**Protection of certain transactions entered into by or relating to the property of the bankrupt. 81.** Subject and without prejudice to the provisions of this Act relating to the proceeds of the sale and seizure of goods of any person, and to the provisions of this Act avoiding certain settlements, and avoiding, on the ground of their constituting fraudulent preferences, certain conveyances, charges, payments, and judicial proceedings, the following transactions, by and in relation to the property of a bankrupt, shall be valid notwithstanding any prior act of bankruptcy: 1. Any disposition or contract with respect to the disposition of property, by conveyance, transfer, charge, delivery of goods, payment of money or otherwise howsoever, made by any bankrupt in good faith, and for valuable consideration, before the date of the order of adjudication, with any person not having at the time of the making of such disposition of property notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication; 2. Any execution or attachment against the land of the bankrupt, executed in good faith, by seizure before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not, at the time of the same being so executed, by seizure, notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication; 3. Any execution or attachment against the goods of any bankrupt, executed in good faith by seizure and sale, before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not, at the time of the same being executed by seizure and sale, notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication.

Imp. § 49.

*As to the discovery of bankrupt's property.*

**Court to summon persons before it suspected of having property of bankrupt. 82.** The Court may on the application of the trustee at any time after an order of adjudication has been made against a bankrupt summon before it the bankrupt, or his wife, or any person whatever known or suspected to have in his possession any of the estate or effects belonging to the bankrupt, or supposed to be indebted to the bankrupt, or any person whom the Court may deem capable of giving information respecting the bankrupt, his trade, dealings, or property, and the Court may require any such person to produce any documents in his custody or power relating to the bankrupt, his dealings or property; and if any person so summoned, refuses to come before the Court at the time appointed, or refuses to produce such documents, having no lawful impediment made known to the Court at the time of its sitting, and allowed by it, the Court may, by warrant addressed as aforesaid, cause such person to be apprehended and brought up for examination.

Imp. § 27 (1, 2).

**Examination of parties by Court. 83.** The Court may examine upon oath, either by word of mouth or written interrogatories, any person so brought before it in manner aforesaid concerning the bankrupt, his dealings, or property.

Imp. § 27 (3).



**Order of Court for payment of amount admitted on examination. 84.** If any person on examination before the Court admit he is indebted to the bankrupt, the Court may on the application of the trustee, order him to pay to the trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.

Imp. § 27 (4).

**Seizure of property of bankrupt. 85.** Any person acting under warrant of the Court may seize any property of the bankrupt divisible amongst his creditors under this Act, and in the bankrupt's custody or possession, or in that of any other person, and with a view to such seizure may break open any house, building, or room of the bankrupt, where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit grant a search warrant to any constable or prescribed officer of the Court who may execute the same according to the tenor thereof.

Imp. § 51.

*Joint and separate estate.*

**Power to present petition against one partner. 86.** Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present such petition against any one or more partners of such firm without including the others.

Imp. § 110.

**Power to dismiss petition against some respondents only. 87.** Where there are more respondents than one to a petition the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

Imp. § 111.

**Property of partners to be vested in same trustee. 88.** Where one member of a partnership has been adjudicated a bankrupt any other petition for adjudication against a member of the same partnership shall be filed in the Court, and unless the Court otherwise directs, the property of such last mentioned member shall vest in the trustee appointed in respect of the property of the first mentioned member of the partnership; and the Court may give such directions for amalgamating the proceedings in respect of the properties of the members of the same partnership as it thinks just.

Imp. § 112.

**Joint creditor may prove for purpose of voting. 89.** If one partner of a firm is adjudged bankrupt any creditor to whom the bankrupt is indebted jointly with the other partners of the firm or any of them may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat, but shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

Imp. § 114.

**Joint and separate dividends. 90.** Where joint and separate properties are being administered dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Imp. § 59 (2).

**Suits by trustee and bankrupt's partner. 91.** Where a member of a partnership is adjudged bankrupt the Court may authorize the trustee, with consent of the creditors certified by a special resolution, to commence and prosecute any action or suit in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action or suit relates shall be void; but notice of the application for authority to commence the action or suit shall be given to such partner, and he may show cause against it, and on his application the Court may, if it thinks fit, directed that he shall receive his proper share

of the proceeds of the action or suit, and, if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.  
Imp. § 113.

*Evidence.*

**Evidence of proceedings at meeting of creditors. 92.** The Registrar or any other person presiding at a meeting of creditors under this Act shall cause minutes to be kept, and duly entered in a book, of all resolutions and proceedings of such meeting, and any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the creditors in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat, or proceedings had, to have been duly passed and had.

Imp. § 133.

**Evidence of proceedings in bankruptcy. 93.** Any petition or copy of a petition in bankruptcy, any order or copy of an order made by the Court, any certificate or copy of a certificate made by the Court, any deed or copy of a deed of arrangement in bankruptcy, and any other instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceedings, or other proceedings had under this Act, may, if any such instrument as aforesaid or copy of an instrument appears to be sealed with the seal of the Court, or purports to be signed by any Judge of the Court, under this Act, be receivable in evidence in all legal proceedings whatever.

Imp. § 134.

**Death of witness. 94.** In case of the death of the bankrupt or his wife, or of a witness whose evidence has been received by any Court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed shall be admitted as evidence of the matters therein deposed to.

Imp. § 136.

**Power of assignee to sue. 95.** Any person to whom any thing in action belonging to the bankrupt is assigned in pursuance of this Act may bring or defend any action or suit relating to such thing in action in his own name.

**Saving as to joint contracts. 96.** Where a bankrupt is a contractor in respect of any contract jointly with any other person or persons such person or persons may sue or be sued in respect of such contract without the joinder of the bankrupt.

Imp. § 114.

**Computation of time. 97.** Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act, or the taking of any proceeding, then, in the computation of such limited time, the same shall be taken as exclusive of the day of such date, or of the happening of such event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of such limited time according to such computation, unless such last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed by the Governor for Public Fast, Humiliation or Thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified. Where by this Act any act or proceeding is directed to be done or taken on a certain day, then, if that day happen to be one of the days in this section specified, such act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

Imp. § 141.

**Forfeiture of dividends after five years nonclaim. 98.** Where any dividends remain unclaimed for five years then and in every such case the same shall be deemed vested in the Crown and shall be paid into the Public Treasury of these Islands, provided that at any time after such vesting the Court may by reason of the disability or absence beyond seas of the person entitled to the sum so vested or for any other reason appearing to it sufficient direct that the said sum shall be repaid out of the Public Treasury and the same shall be thereupon paid, by the Receiver General under the Governor's warrant.

Imp. § 162.



**Removal of bankrupt from trusteeship. 99.** Where a bankrupt is a trustee the Court shall have power to appoint a new trustee in substitution for the bankrupt (whether voluntarily resigning or not) if it appears to the Court expedient to do so.

### *Part V. Persons having Privilege of Parliament.*

**Privilege of Parliament not to benefit in bankruptcy. 100.** If any member of the Legislative Council or House of Assembly commits an act of bankruptcy he may be dealt with under this Act in like manner as if he were not a member.

Imp. § 124.

**Vacating of seat in the Legislature. 101.** If a person being a member of the Legislative Council or Assembly is adjudged bankrupt he shall be and remain during one year from the date of the order of adjudication incapable of sitting and voting in the Legislature unless within that time either the order is annulled or the creditors who prove debts under the bankruptcy are fully paid or satisfied. Provided that such debts (if any) as are disputed by the bankrupt shall be considered for the purpose of this section as paid or satisfied if within the time aforesaid he enters into a bond in such sum and with such sureties as the Court approves to pay the amount to be recovered in any proceeding for the recovery of or concerning such debts together with any costs to be given in such proceedings.

Imp. §§ 32, 33.

**Certificate of bankruptcy to be given by the Court to the Speaker. 102.** If within the time aforesaid the order of adjudication is not annulled, and the debts of the bankrupt are not fully paid or satisfied as aforesaid, then the Court shall immediately after the expiration of that time, certify the same to the Governor if the bankrupt is a member of the Legislative Council, or to the Speaker if the bankrupt is a member of the House of Assembly, and in the latter case the seat of such member of the Assembly shall be vacant and the House of Assembly shall proceed to take such steps thereupon as upon any vacancy arising from any other cause.

### *Part VI. Liquidation by Arrangement.*

#### *Regulations.*

**Regulations as to liquidation by arrangement. 103.** The following regulations shall be made with respect to the liquidation by arrangement of the affairs of the debtor: 1. A debtor unable to pay his debts may summon a general meeting of his creditors, and such meeting may by a special resolution, as defined by this Act, declare that the affairs of the debtor are to be liquidated by arrangement and not in bankruptcy, and may, at that or some subsequent meeting, held at an interval of not more than a week appoint a trustee with or without a committee of inspection; 2. All the provisions of this Act relating to a first meeting of creditors, and to subsequent meetings of creditors, in the case of a bankruptcy, including the description of creditors entitled to vote at such meetings, and the debts in respect of which they are entitled to vote, shall apply respectively to the first meeting of creditors, for the purposes of this section, subject to the following modifications: a) That every such meeting shall be presided over by such chairman as the meeting may elect, and b) That no creditor shall be entitled to vote until he has proved by an affidavit or declaration a debt provable in bankruptcy to be due to him, and the amount of such debt with any prescribed particulars; and any person wilfully making a false declaration in relation to such debt shall be guilty of a misdemeanour. 3. The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the meeting at which the special resolution is passed, and shall answer any inquiries made of him, and he, or if he is so prevented from being at such meeting some one on his behalf, shall produce to the meeting a statement shewing the whole of his assets and debts, and the names and addresses of the creditors to whom his debts are due; 4. The special resolution together with the statement of the assets and debts of the debtor, and the name of the trustee appointed, and of the members if any of the committee of inspection, shall be presented to the Registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section; but if satisfied that it was so passed, and that a trustee has been appointed, with or without a committee of inspection, he shall forthwith register the resolution, and the statement of the assets and debts of the debtor, and such resolution and statement

shall be open for inspection on the prescribed conditions, and the liquidation by arrangement shall be deemed to have commenced as from the date of the appointment of the trustee; 5. All such property of the debtor as would if he were made bankrupt be divisible amongst his creditors shall from and after the date of the appointment of a trustee vest in such trustee under a liquidation by arrangement, and be divisible amongst the creditors, and all such settlements, conveyances, transfers, charges, payments, obligations, and proceedings as would be void against the trustee in the case of a bankruptcy shall be void against the trustee in the case of liquidation by arrangement; 6. The certificate of the Registrar in respect of the appointment of any trustee in the case of a liquidation by arrangement shall be of the same effect as a certificate of the Court to the like effect in the case of a bankruptcy; 7. The trustee under a liquidation shall have the same powers and perform the same duties, as a trustee under a bankruptcy; and the property of the debtor shall be distributed in the same manner as in a bankruptcy; and with the modification hereinafter mentioned, all the provisions of this Act shall, so far as the same are applicable, apply to the case of a liquidation by arrangement in the same manner as if the word "bankrupt" included a debtor whose affairs are under liquidation, and the word "bankruptcy" included liquidation by arrangement; and in construing such provisions the appointment of a trustee under a liquidation shall according to circumstances, be deemed to be equivalent to, and a substitute for, the presentation of a petition in bankruptcy, or the service of such petition or an order of adjudication in bankruptcy; 8. The creditors at their first or general meeting may prescribe the bank into which, or the names of the person or persons to whom, the trustee is to pay any moneys received by him and the sum which he may retain in his hands; 9. The provisions of this Act with respect to the close of the bankruptcy, discharge of a bankrupt, to the release of the trustee, and to the audit of accounts by the Registrar, shall not apply in the case of a debtor whose affairs are under liquidation by arrangement: but the close of the liquidation may be fixed, and the discharge of the debtor, and the release of the trustee may be granted by a special resolution of the creditors in general meeting, and the accounts may be audited in pursuance of such resolution at such time and in such manner and upon such terms and conditions as the creditors think fit; 10. The trustee shall report to the Registrar the discharge of the debtor, and a certificate of such discharge given by the Registrar shall have the same effect as an order of discharge given to a bankrupt under this Act; 11. Rules of Court may be made in relation to proceedings on the occasion of liquidation by arrangement in the same manner, and to the same extent, and of the same authority as in respect of proceedings in bankruptcy; 12. If it appear to the Court on satisfactory evidence that the liquidation by arrangement can not, in consequence of legal difficulties, or of there being no trustee for the time being, or for any sufficient cause proceed, without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor a bankrupt, and proceedings may be had accordingly; 13. Where no committee of inspection is appointed the trustee may act on his own discretion in cases where he would otherwise have been bound to refer to such committee; 14. In calculating a majority on a special resolution for the purposes of this section, creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value, but not in the majority in number.

Imp. 53 & 54 Vic. c. 71, § 3.

## *Part VII. Composition with Creditors.*

### *Regulations.*

**Regulations as to composition by creditors. 104.** The creditors of a debtor unable to pay his debts may without any proceedings in bankruptcy, by an extraordinary resolution, resolve that a composition shall be accepted in satisfaction of the debts due to them from the debtor. An extraordinary resolution of creditors shall be a resolution which has been passed by a majority in number, and three-fourths in value of the creditors of the debtor, assembled at a general meeting to be held in the manner prescribed, of which notice has been given in the prescribed manner, and has been confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting of which notice has been given in the prescribed manner, and held at an interval of not less than seven days nor



more than fourteen days from the date of the meeting at which such resolution was first passed. In calculating a majority for the purposes of a composition under this section, creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value but not in the majority in number, and the value of the debts of secured creditors shall, as nearly as circumstances admit, be estimated in the same way, and the same description of creditors shall be entitled to vote at such general meetings as in bankruptcy. The debtor, unless prevented by sickness or other cause satisfactory to such meetings, shall be present at both the meetings at which the extraordinary resolution is passed, and shall answer any inquiries made of him, and he, or if he is so prevented from being at such meetings some one on his behalf, shall produce to the meeting a statement shewing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due. The extraordinary resolution together with the statement of the debtor as to his assets and debts, shall be presented to the Registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section; and if satisfied that it has been so passed he shall forthwith register the resolution and statement of assets and debts, but until such registration has taken place such resolution shall be of no validity, and any creditor of the debtor may inspect such statement at prescribed times and on payment of such fee if any as may be prescribed. The creditors may by an extraordinary resolution add to or vary the provisions of any composition previously accepted by them without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation; and any such extraordinary resolution shall be presented to the Registrar in the same manner and with the same consequences, as the extraordinary resolution by which the composition was accepted in the first instance. The provisions of a composition accepted by an extraordinary resolution in pursuance of this section shall be binding on all the creditors whose names and addresses, and the amount of the debts due to whom, are shewn in the statement of the debtor produced to the meetings at which the resolution has passed, but shall not affect or prejudice the rights of any other creditors. Where a debt arises on a bill of exchange or promissory note if the debtor is ignorant of the holder of any such bill of exchange or promissory note he shall be required to state the amount of such bill or note, the date on which it falls due, the name of the acceptor or person to whom it is payable, and any other particulars within his knowledge respecting the same, and the insertion of such particulars shall be deemed a sufficient description of the creditor of the debtor in respect of such debt; and any mistake made inadvertently by a debtor in the statement of his debts may be corrected after the prescribed notice has been given, with the consent of a general meeting of his creditors. The provisions of any composition made in pursuance of this section, may be enforced by the Court, on a motion made in a summary manner by any person interested; and any disobedience of the order of the Court made on such motion shall be deemed to be a contempt of Court. Rules of Court may be made in relation to proceedings on the occasion of the acceptance of a composition by an extraordinary resolution of creditors in the same manner and to the same extent and of the same authority as in respect of proceedings in bankruptcy. If it appear to the Court on satisfactory evidence that a composition under this section can not, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor a bankrupt, and proceedings may be had accordingly.

Imp. 53 & 54 Vic. c. 71, § 3.

**Registration of resolutions of creditors conclusive in certain cases. 105.** The registration by the Registrar of a special resolution of the creditors on the occasion of a liquidation by arrangement under Part VI. of this Act, or of an extraordinary resolution of the creditors on the occasion of a composition under the VIIIth Part of this Act, shall, in the absence of fraud, be conclusive evidence, that such resolutions respectively were duly passed and all the requisitions of this Act in respect of such resolutions complied with.

### *Part VIII. Power of Court to order Arrest of absconding Debtors.*

**Arrest of debtor about to abscond. 106.** The Court, or the Chief Justice, or in his absence any Judge of the Court, may by warrant addressed to any constable

or prescribed officer of the Court, cause a debtor to be arrested and safely kept as prescribed until such time as the Court may order, if, after a debtor's summons has been granted in the manner prescribed by this Act, and before a petition of bankruptcy can be presented against him, it appear to the Court or Judge that there is probable reason for believing that the debtor is about to go abroad with a view of avoiding payment of the debt for which the summons has been granted, or of avoiding service of a petition of bankruptcy, or of avoiding appearing to such petition, or of avoiding examination in respect of his affairs, or otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy: Provided, always, that nothing in this section contained shall be construed to alter or qualify the right of the debtor to apply to the Court in the prescribed manner to dismiss the said summons as in this Act is provided, or to pay, secure, or compound for the said debt within the time by the said Act provided, without being deemed to have committed an act of bankruptcy; and provided also that upon any such payment or composition being made, or such security offered as the Court shall think reasonable, the said debtor shall be discharged out of custody unless the Court shall otherwise order. Every order made by any single Judge of the Court under this section shall be liable to be revoked or altered by the Court as it may deem expedient.

Imp. § 25 (1).

**When arrest not valid. 107.** No arrest shall be valid or protected under this Act unless the debtor, before or at the time of his arrest, shall be served with the debtor's summons.

Imp. § 25 (1).

**Security for debt given after arrest. 108.** No payment or composition of a debt made or security for the same given after an arrest made under the provisions of this Part of this Act shall be exempted from the provisions of this Act relating to fraudulent preferences.

Imp. § 25 (2).

**Commencement of the operation of this Act. 109.** This Act shall go into operation on the first day of January one thousand eight hundred and seventy nine which day shall for all purposes be construed to be the commencement of this Act, except that at any time after the passing of this Act, the Court shall have power to make and prescribe rules and regulations to take effect at and from the commencement of this Act, and a scale of fees and charges to be submitted to the Legislature as herein provided.

## **b) No. 29 of 1876. An Act for the Abolition of Imprisonment for Debt, for the Punishment of Fraudulent Debtors and for other Purposes (18th November, 1876).<sup>1)</sup>**

### *Part II. Punishment of Fraudulent Debtors.*

**Punishment of fraudulent debtors. 10.** Any person adjudged bankrupt and any person whose affairs are liquidated by arrangement in pursuance of the *Bankruptcy Act, 1876*, shall in each of the cases following be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years, with or without hard labor; that is to say: 1. If he does not to the best of his knowledge and belief fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property, real and personal, and how, and to whom, and for what consideration, and when, he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade, if any, or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud; 2. If he does not deliver up to such trustee, or as he directs, all such parts of his real and personal property as are in his custody, or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud; 3. If he does not deliver up to such trustee, or as he directs, all books, documents, papers, and writings

<sup>1)</sup> The references (Imp.) are to the *Imperial Debtors Act, 1869*, (32 & 33 Vic. c. 62).



in his custody or under his control, relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud; 4. If after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to him or from him, unless the jury is satisfied that he had no intention to defraud; 5. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation or within four months next before such presentation or commencement he fraudulently removes any part of his property of the value of ten pounds or upwards; 6. If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud; 7. If knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation he fail for the period of a month to inform such trustee as aforesaid thereof; 8. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law; 9. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation or within four months next before such presentation or commencement he conceals, destroys, mutilates, or falsifies or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law; 10. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation or within four months next before such presentation or commencement he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law; 11. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation or within four months next before such presentation or commencement he fraudulently parts with, alters, or makes any omission or is privy to the fraudulently parting with, altering, or making any omission in any document affecting or relating to his property or affairs; 12. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation or at any meeting of his creditors within four months next before such presentation or commencement he attempts to account for any part of his property by fictitious losses or expenses; 13. If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation he by any false representation or other fraud has obtained any property on credit and has not paid for the same; 14. If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation he obtains under the false pretence of carrying on business and dealing in the ordinary way of his trade any property on credit and has not paid for the same, unless the jury is satisfied that he had no intent to defraud; 15. If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation he pawns, pledges, or disposes of otherwise than in the ordinary way of his trade any property which he had obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud; 16. If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy or liquidation.

Imp. § 11.

**Penalty for absconding with property. 11.** If any person who is adjudged a bankrupt or has his affairs liquidated by arrangement after the presentation of a bankruptcy petition against him or the commencement of the liquidation or within four months before such presentation or commencement quits Bermuda and takes with him or attempts to make preparation for quitting Bermuda and taking with him any part of his property to the amount of twenty pounds or upwards which ought by law to be divided amongst his creditors he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of felony punishable with imprisonment for a time not exceeding two years with or without hard labour.

Imp. § 12.

**Penalty of fraudulently obtaining credit. 12.** Any person shall in each of the cases following be deemed guilty of a misdemeanour and on conviction thereof shall be liable to be imprisoned for any time not exceeding one year with or without hard labour, that is to say: 1. If in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud; 2. If he has with intent to defraud his creditors or any of them made or caused to be made any gift, delivery, or transfer of or any charge on his property; 3. If he has with intent to defraud his creditors concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him.

Imp. § 13.

**False claims, etc., a misdemeanour. 13.** If any creditor in any bankruptcy or liquidation by arrangement or composition with creditors, in pursuance of the *Bankruptcy Act, 1876*, wilfully and with intent to defraud, makes any false claim, or any proof, declaration, or statement of account, which is untrue in any material particular, he shall be guilty of a misdemeanour, punishable with imprisonment not exceeding one year, with or without hard labour.

Imp. § 14.

**Debts incurred by fraud. 14.** Where a debtor makes any arrangement or composition with his creditors under the provisions of the *Bankruptcy Act, 1876*, he shall remain liable for the unpaid balance of any debt which he incurred or increased, or whereof, before the date of the arrangement or composition, he obtained forbearance, by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

Imp. § 15.

**Order by Court for prosecution on report of trustee. 15.** Where a trustee in any bankruptcy reports to the Court of bankruptcy that in his opinion a bankrupt has been guilty of any offence under this Act, or where the Court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the bankrupt has been guilty of any offence under this Act, the Court shall, if it appears to the Court that there is a reasonable probability that the bankrupt may be convicted, order the trustee to prosecute the bankrupt for such offence.

Imp. § 16.

**Application of Vexatious Indictments Act to offences under this Act. 16.** Every misdemeanour under the second part of this Act shall be deemed to be an offence within and subject to the provisions of the *Vexatious Indictments Act, 1876*, and when any person is charged with any offence before any Justice or Justices such Justice or Justices shall take into consideration any evidence adduced before him or them tending to shew that the act charged was not committed with a guilty intent.

Imp. § 18.

**Form of indictment. 17.** In an indictment for an offence under this Act it shall be sufficient to set forth the substance of the offence charged in the words of this Act specifying the offence or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, adjudication, or any proceedings in, or order, warrant, or document of the Court of bankruptcy.

Imp. § 19.

**Punishments under this Act cumulative. 18.** When any person is liable under any other Act of the Legislature of these Islands or at common law to any punishment or penalty for any offence made punishable by this Act, such person may be proceeded against under such other Act or at common law or under this Act, so that he be not punished twice for the same offence.

Imp. § 23.

**Attachment law not to be affected by this Act. 19.** Nothing in this Act contained shall affect the law for the attachment of the goods and chattels of absent debtors under any Act or Acts of the Legislature of these Islands.



# British Honduras.

## Introduction.<sup>1)</sup>

### History and government.<sup>2)</sup>

The eastern coast of Central America was visited in 1502 by Columbus, and explored by Spanish navigators during the sixteenth century. In the closing years of the sixteenth century and the early part of the seventeenth century this coast became the resort of English, French, and Dutch traders and buccaneers. In 1630 King Charles I. granted two small islands off the Mosquito coast to an English trading company, and this company established a trading station at Cape Gracias a Dios. Between 1655 and 1670 the king of the Mosquito Indians placed his territory under the protection of the British Crown. About this period settlements of English woodcutters were made in British Honduras and Mosquitia, and prior to 1739 the government of Jamaica appears to have appointed justices of the peace in the Mosquito territory<sup>3)</sup>. Under the treaty of Paris (1763) the English settlers obtained formal recognition from the Spanish government. The treaty provided for the demolition of the fortifications erected in the territory, but stipulated that the woodcutters should not be disturbed in their occupation, and should be allowed to erect houses and magazines. Complaints being made of unwarrantable Spanish interference Sir William Burnaby, the commanding officer of the Jamaica station, was sent to confirm the settlers in their rights. He drew up a code of regulations, afterwards called the "Burnaby Code," which the settlers bound themselves to observe by an instrument under their hands and seals. Under this code five of the principal inhabitants were elected to act as magistrates, and were invested with authority to try and determine all disputes. A jury of thirteen was chosen in the same manner for their assistance, and the determination of the tribunal was declared to be final. The magistrates in full council, with the approval of a majority of the inhabitants in public meeting, were empowered to make additional regulations, and the officers of the British navy sent to the Settlement were invested with power to enforce the regulations. In the succeeding years the code was enlarged and amended, and it was published in 1809<sup>5)</sup>. As to the legal effect of these enactments it is said that though they could not exactly be considered as having the effect of law, yet by common consent of the inhabitants they were deemed to be binding, and were strictly acted upon and enforced<sup>6)</sup>. The rights of the settlers were confirmed by the treaty of Versailles (1783) and the convention of London (1786), but the sovereignty of Spain over the district was reserved. In 1786 a British superintendent was sent to Belize, and since 1797 there has always been a British representative in the Settlement.

The last attempt by the Spaniards to drive the English settlers out of British Honduras was made in 1798<sup>7)</sup>. The Privy Council has held that in or before 1817 the English Crown had assumed territorial sovereignty in the Settlement<sup>4)</sup>. "The

<sup>1)</sup> The author desires to express his indebtedness to Wilfred Collet, Esq., C. M. G., Colonial Secretary of British Honduras, for the texts of the ordinances of the Colony and to the authorities of the Bank of British Honduras for information regarding the customs of banks in the Colony.

— <sup>2)</sup> In addition to the works cited in the notes to this section, see Bancroft, *History of Central America*, (in his *Works*, Vols. 6—8); Gibbs, *British Honduras*; Peniche, *Belice*, (in *Boletín, Sociedad Mexicana de Geografía y Estadística, segunda época*, T. 1); Henderson, *British settlement of Honduras*. — <sup>3)</sup> Lucas, *Historical geography of the British Colonies*, Vol. 2, pp. 294—299.

— <sup>4)</sup> Clark, *Colonial Law*, pp. 327, 328; Mill, *Colonial constitutions*, p. 226. — <sup>5)</sup> Clark, *l. c.*, p. 329. The Burnaby Code is referred to, but no decision given as to the legal effect of its provisions, in *Attorney-General for British Honduras v. Bristowe*, (1880), L. R. 6 A. C. 143, 149. —

<sup>6)</sup> Allen, *Eastern coast of Central America*, (in *Journal, Royal Geographical Society*, Vol. 11, at p. 81).

— <sup>7)</sup> *Attorney-General for British Honduras v. Bristowe*, (1880) L. R. 6 A. C. 143, 148, 155, reversing the decision of the Supreme Court of British Honduras, which held that the territorial sovereignty of Great Britain began when British Honduras was declared a British colony

exact time when the Spanish government can be said to have finally relinquished the territory, and the time when the British Crown assumed territorial jurisdiction over it are . . . both undefined. There certainly seems to have been an interval between the abandonment of Spanish and the assumption of British sovereignty, though the length of that interval can not be determined. During the time when the country was unquestionably under Spanish dominion, a superintendent was appointed by the English Crown<sup>1</sup>).

It was once held that British Honduras was not a territory belonging to England, at least within the meaning of the Navigation Acts<sup>2</sup>). By an Act of Parliament, passed in 1833<sup>3</sup>), the privileges of British registered ships in all direct trade between the United Kingdom or the British possessions in America and the Settlement of Honduras were accorded to ships built in the Settlement, and owned and navigated as British ships.

About 1830 the superintendent began to assume the power to legislate for the Settlement by means of proclamations, and in 1832 he claimed the power of appointing the magistrates. A conflict between the executive and the representative assembly ensued, which was partly adjusted in 1840 by the appointment of an executive council. In 1853 an Act<sup>4</sup>) was passed by the superintendent and the local assembly establishing a form of government with the legislative power vested in the superintendent and an assembly of twenty-one members<sup>5</sup>). By the Laws in Force Act (1856)<sup>6</sup>) it was provided that all rules, orders, resolutions, and enactments of magistrates, or of public meetings of a permanent and municipal character, or intended as general laws of the Settlement, which had not been revoked, altered, repealed, or superseded by any similar rules, orders, or resolutions, or by any order, proclamation, or other Act of Her Majesty's Government, or Her Majesty's superintendent for the time being, or by any other law of the Settlement prior to or during the then present session, and which had been acted upon as permanent and continuing laws since the 1st January, 1850, should be and continue, and were thereby declared to be laws of the Settlement as completely as if they had been expressly re-enacted by any other law under the then present constitution<sup>7</sup>).

In 1862 the superintendent was replaced by a lieutenant-governor, responsible to the governor of Jamaica, and the Settlement declared a colony. In 1870 British Honduras became a Crown colony, and in 1884 all connection with Jamaica was severed, except the right of appeal to the Supreme Court of Jamaica<sup>8</sup>).

"From an historical point of view," says Lucas, "British Honduras is a very interesting instance of the evolution of a colony. It began with private adventurers, who held their own in spite of a strong foreign power, and whose success practically obliged their own government to afford them some measure of recognition and protection. It originated with trade, trade begat settlement, and settlement brought about in fulness of time a colony. The trade and the settlement even at first more or less contraband, then actual facts produced trading rights by treaty, and trading rights developed by force of circumstances into ownership of the soil. All through the history the men and their actions forced the hands of the governments concerned, and it may almost be said that the colonization of British Honduras took place in spite of the State."<sup>9</sup>)

The present government is regulated by letters patent of 2d October, 1884<sup>10</sup>), and by local ordinances<sup>11</sup>). The executive power is vested in a governor, assisted by an executive council, and the legislative power in the governor and a legislative council composed of official and non-official members appointed by the Crown.

(12th May, 1862). The view of the Privy Council is in accord with the position taken by England in the diplomatic correspondence with the United States in regard to the interpretation of the Clayton-Bulwer Treaty of 1850. — Cp. Moore, *Digest of international law*, Vol. 3, pp. 130—210.

<sup>1</sup>) Per Sir Montague E. Smith, in *Attorney-General for British Honduras v. Bristowe*, (1880), L. R. 6 A. C. 143, 148. — <sup>2</sup>) 1 *Chitty on Commerce*, p. 636, cited by Clark, l. c., p. 326. — <sup>3</sup>) 3 & 4 Wm. 4, c. 54. — <sup>4</sup>) 16 Vic. c. 4. — <sup>5</sup>) Mills, l. c., p. 227; *Hodge v. Attorney-General of British Honduras*, (1864), 2 Moo. P. C. (N. S.) 325, 328. — <sup>6</sup>) 18 Vic. c. 21. — <sup>7</sup>) *Hodge v. Attorney-General of British Honduras*, (1864), 2 Moo. P. C. (N. S.) 325, 329. — <sup>8</sup>) 44 & 45 Vic. c. 36; Stat. R. & O. Rev. 1904, Vol. 1. "British Honduras," p. 1. — <sup>9</sup>) L. c., p. 317. — <sup>10</sup>) Stat. R. & O. Rev. 1904, Vol. 1, "British Honduras," p. 1—4. — <sup>11</sup>) Ord. No. 14 of 1892.



### Law in force.

The provisions of the common law of England, and all statutes of general application of the Imperial Parliament in abrogation, or derogation, or declaratory of the common law, enacted on or before 31st December, 1898, are in force, except in so far as they are locally inapplicable or have been modified by local legislation<sup>1</sup>). But Imperial statutes relating to bankruptcy or insolvency, or to customs or excise, or relating to or regulating any business, trade, or profession do not extend to the Colony<sup>2</sup>). Acts of the Imperial Parliament expressly or impliedly operative in British Honduras are in force, regardless of the date of their enactment<sup>3</sup>). But the Crown has not reserved the power of legislating by order in council<sup>4</sup>).

The English law relating to the making, operation, assignment, and discharge of contracts is in force. The provisions of the fourth section of the Statute of Frauds<sup>5</sup>), relating to parol agreements is re-enacted, but the consideration for a guarantee need not appear in the writing<sup>6</sup>).

Aliens may acquire, hold and dispose of property on the same terms as British subjects<sup>7</sup>). The Imperial Married Women's Property Act, 1882<sup>8</sup>), is in force<sup>9</sup>), and married women may sue and be sued in the District Courts in cases where these courts have jurisdiction, without joinder of their husbands<sup>10</sup>). Specialty and simple contracts for the repayment of money lent or to be lent, or for goods supplied or to be supplied, except for necessities, and all accounts stated made with an infant are void, and may not be ratified upon the infant's attaining full age, even though new consideration be given for the promise<sup>11</sup>). Gaming contracts are void<sup>12</sup>). Bills of sale and liens on growing crops must be registered<sup>13</sup>).

### Courts and procedure.<sup>14</sup>)

The Supreme Court consists of a chief justice and such other judge or judges as may be appointed<sup>15</sup>). The Supreme Court has all the jurisdiction, powers, and authorities vested in the English courts of Queen's Bench, Common Pleas, Exchequer, Chancery, Oyer and Terminer, Nisi Prius and Probate at the time of the passing of the Supreme Court of Judicature Act, 1873<sup>16</sup>). The Supreme Court also has jurisdiction in bankruptcy, in divorce and matrimonial causes<sup>17</sup>), escheat<sup>18</sup>), infancy, lunacy<sup>19</sup>), and all other jurisdiction expressly or impliedly conferred by any Imperial or local Acts<sup>20</sup>). Law and equity are administered concurrently<sup>21</sup>).

The Supreme Court has appellate jurisdiction over cases determined in all inferior courts, and in respect of any misdirections or misrulings of the judges thereof<sup>22</sup>).

Under the British Honduras (Court of Appeal) Act, 1881<sup>23</sup>), the Crown was authorized to constitute by order in council the Supreme Court of Judicature of Jamaica, a Court of Appeal from the Supreme Court of British Honduras<sup>24</sup>). An appeal also lies from the Supreme Court to the Privy Council in cases where the amount involved is \$ 1500. A pro forma judgment suffices. Notice of appeal

<sup>1</sup>) Cons. Laws, 1887, c. 7, §§ 1, 3; Ord. No. 14 of 1899, § 1. These provisions are reprinted in full, p. 754, *infra*. — <sup>2</sup>) Cons. Laws, 1887, c. 7, § 6. — <sup>3</sup>) Ibid. § 8. — <sup>4</sup>) Colonial Office List, 1907, p. XXV. — <sup>5</sup>) 29 Chas. 2, c. 3. — <sup>6</sup>) Cons. Laws, 1887, c. 21, § 5. — <sup>7</sup>) Ibid. c. 38. — <sup>8</sup>) 45 & 46 Vic. c. 75, as amended by 56 & 57 Vic. c. 63. — <sup>9</sup>) Cp. Ord. No. 14 of 1901, § 112. — <sup>10</sup>) Ord. No. 11 of 1899, § 21. — <sup>11</sup>) Cons. Laws, 1887, c. 21, §§ 9, 10. But "this enactment shall not invalidate any contract into which an infant may by any existing or future enactment, or by the rules of the common law or equity enter, except such as now by law are voidable." — Ibid. § 9. Contracts of service are not invalid by reason of the infancy or coverture of either of the contracting parties, unless such disability was known at the time the agreement was made, and the dissent of the parent, guardian, or husband expressed. — Ibid. c. 71, § 15. — <sup>12</sup>) Cons. Laws, 1887, c. 21, § 15, substantially embodying the provisions of the first part of § 1 of 9 Anne, c. 14. — <sup>13</sup>) Ibid. c. 21, §§ 22—44. — <sup>14</sup>) See an interesting note on the administration of justice in British Honduras, in the Juridical Review, Vol. 1, pp. 387—388. — <sup>15</sup>) Cons. Laws, 1887, c. 8, § 2. — <sup>16</sup>) Ibid. § 29. — <sup>17</sup>) Ibid. § 30. For the provisions relating to jurisdiction in bankruptcy, see Bankruptcy Ordinance, 1901, §§ 79—91, *infra*. — <sup>18</sup>) Ibid. § 33. — <sup>19</sup>) Ibid. § 34. — <sup>20</sup>) Ibid. § 32. — <sup>21</sup>) Ibid. § 35. In all matters in which there is any conflict or variance between the rules of equity and the rules of common law, the rules of equity prevail. — Ibid. — <sup>22</sup>) Ibid. § 31. — <sup>23</sup>) 44 & 45 Vic. c. 36. — <sup>24</sup>) Order in Council, 8th August, 1911. Stat. R. & O. 1911, p. 3.

must be given within twenty-one days. Appellant must furnish security in an amount not exceeding \$ 2500, within three months<sup>1)</sup>).

District Courts presided over by the district commissioner are established in each district<sup>2)</sup>. These courts have jurisdiction over all personal actions where the debt, demand, or damage claimed is not more than \$ 100, whether on balance of account or otherwise<sup>3)</sup>. The District Courts also have jurisdiction of actions for the recovery of penalties, not exceeding \$ 100, imposed by the rules of any body corporate, public body or institution, or other lawful society upon the members thereof or the subscribers thereto, for the infraction of the rules of any such body corporate, institution, or society<sup>4)</sup>. Causes of action may not be divided in order to bring several actions each within the jurisdictional amount<sup>5)</sup>, but where the amount claimed consists of a balance not exceeding \$ 100, after an admitted set-off due to the defendant, jurisdiction may attach<sup>6)</sup>. The District Courts have no jurisdiction of actions of ejectment or in which the title to any corporeal or incorporeal hereditaments are in question, nor of actions for libel, slander, false imprisonment, malicious prosecution, seduction, criminal conversation, or breach of promise of marriage. All actions are heard and determined in a summary way<sup>7)</sup>.

Actions of account, actions of debt grounded upon any lending or contract without specialty, and actions for debt for arrears of rent must be brought within six years next after the cause of action arose<sup>8)</sup>. The same period of limitation is prescribed for actions in the Court of Vice-Admiralty in respect of seamen's wages<sup>9)</sup>. Actions of covenant or debt upon a bond or other specialty must be brought within twenty years<sup>10)</sup>. Actions of account or for not accounting, and suits for account concerning the trade between merchant and merchant, their factors and servants, are subject to a period of limitation of six years<sup>11)</sup>.

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## Statutes.<sup>12)</sup>

### Application of English Law.

#### a) Cons. Laws, 1887, c. 7.

**How English law qualified.** 1. Wherever by this chapter, or any other law, it is declared that the common law of England or any Imperial laws shall extend to the Colony, the same shall be deemed to extend thereto so far only as the juris-

<sup>1)</sup> Ord. No. 5 of 1911. For appeals in bankruptcy cases see Ord. No. 17 of 1901, *infra*. —

<sup>2)</sup> Ord. No. 11 of 1899, § 4. — <sup>3)</sup> Ord. No. 5 of 1901, § 1. — <sup>4)</sup> Ord. No. 11 of 1899, § 16. —

<sup>5)</sup> Ibid. § 17. — <sup>6)</sup> Ibid. § 18. — <sup>7)</sup> Ord. No. 5 of 1901, § 1. — <sup>8)</sup> Cons. laws, 1887, c. 19, § 32. —

<sup>9)</sup> Ibid. § 33. — <sup>10)</sup> Ibid. § 38. — <sup>11)</sup> Ibid. § 41. — <sup>12)</sup> As in force 22d March, 1912.

\*) Declared an official compilation and publication within the Imperial Evidence (*Colonial Statutes*) Act, 1907, (7 Edw. 7, c. 16). — Ord. No. 2 of 1908.



diction of the court and local circumstances reasonably permit, and render such extension suitable and appropriate, and subject to any existing or future laws of the Colonial Legislature. And for the purpose of facilitating the application of the said laws, it shall be lawful for the presiding judge to construe any enactment of an Imperial statute with such verbal alteration not affecting the substance as may be necessary to render the same applicable to the matter before the court; and every judge or officer of the Supreme Court having or exercising functions of the like kind, or analogous to the functions of any judge or officer referred to in such statute, shall be deemed to be within the meaning of the enactments thereof relating to such last-mentioned judge or officer; and whenever the great seal or any other seal is mentioned in any statute, it shall be read as if the seal of the Supreme Court were substituted therefor.

Provisions similar to those of this chapter were contained in the Ordinance of the 8th March, 1856, as modified by the Ordinances of 27th October, 1865, and 2d October, 1879. Under the last named Ordinance the Imperial laws were to "be deemed to extend thereto so far only as the jurisdiction of the court and local circumstances permit, and subject to any existing or future acts or ordinances of the Colonial Legislature." It was held by the Privy Council that the words "local circumstances permit" meant "local circumstances reasonably permit." Applying this principle it was further held that the English Mortmain Act (9 Geo. 2, c. 36) was framed for reasons affecting the land and society of England, and not for reasons applying to a new colony, and was therefore not applicable in British Honduras. — *Jex v. McKinney*, (1889), L. R. 14 A. C. 77. This interpretation is now incorporated in the statute itself.

**To be read as if locally enacted. 2.** In the construction of all such acts of the Imperial Parliament as are herein declared to extend to this Colony, they may, for the purpose of their local operation, and so far as may be necessary for their enforcement, be read as if they had been made and passed in this Colony; and all offenses and causes of action, triable in any county in England, may be tried in the courts of this Colony; and all absence in places beyond the seas may be considered absence in places beyond the limits of this Colony.

**Common law extended and Imperial acts dealing with same. 3.** Subject as aforesaid the common law of England, and all statutes of the Imperial Parliament in abrogation or derogation or in any way declaratory of the common law, shall extend to this Colony: but this shall not be held to confer or establish any freehold of office, all offices and appointments being held, as heretofore, and subject to all duties imposed upon the holders thereof by law.

It is to be noted that the common law as well as Imperial statutes in abrogation, derogation, or declaratory of the common law are adopted, in so far as applicable to local conditions. It is conceivable that the common law may continue in force in the Colony, although abrogated or modified as to England by an Imperial enactment, held not to be locally applicable. — *Cp. Jex v. McKinney*, (1889), L. R. 14 A. C. 77, 81. Or by an enactment adopted on or after 1st January, 1899, and therefore not extended to the Colony. — Ord. No. 14 of 1899, § 1, reprinted *infra*. The question whether a particular provision is locally applicable is a judicial one.

**Criminal law extended. 4.** Subject as aforesaid, and subject to the provisions of the Criminal Code, in its present or any future amended form, the criminal law of England as it may be at the time of the passing of this chapter, and as it may be from time to time amended or declared by any act of the Imperial Legislature, shall be in force in this Colony.

*Cp. Ord. No. 14 of 1899, § 1, infra.*

**Imperial statutes not to come into force until twelve months after passing in England. 5.** No Imperial statute shall come into force within this Colony by virtue of this chapter until after the lapse of twelve months from the day of the date of the passing thereof in England.

"Month" means calendar month. — *Cons. Laws, 1887, c. 1, § 11.*

**Imperial (present and future) law relating to certain subjects excluded. 6.** No Imperial statute of any local or limited operation, or relating to bankruptcy or insolvency, or to customs or excise, or relating to or regulating any trade, business, or profession shall extend to this Colony by virtue of this chapter.

The Ordinances relating to bankruptcy are given *infra*, p. 759.

**Laws relating to powers of governor extended. 7.** All laws relating to any powers or jurisdictions given to or exercised by the Governor shall be laws of this Colony, in so far as they are necessary to carry out and confirm any such powers or jurisdictions.

**Saving clause as to express Imperial legislation. 8.** This chapter is not intended

to affect any statute of the Imperial Parliament in which this Colony is expressly named or the colonies generally are included.

The colonies are bound by any act of the Imperial Parliament expressly or impliedly extended to them, but the Crown has not reserved the right of legislating by order in council in British Honduras.

## **b) No. 14 of 1899. To amend chapter 7 of The Consolidated Laws (25th September, 1899).**

**Amendment of chapter 7. Saving clause. 1.** Notwithstanding anything contained in chapter 7 of The Consolidated Laws, no Imperial statute passed on or after the first day of January, 1899, shall under and by virtue of that chapter come into force within this Colony.

By virtue of the provisions of this chapter as amended, and subject to the limitations therein set forth, *semble*, the following Imperial Acts relating to topics within the scope of this work are in force in British Honduras on 1st January, 1912:

Partnership, 53 & 54 Vic. c. 39<sup>1</sup>).

Companies, \*25 & 26 Vic. c. 89; \*30 & 31 Vic. c. 131; \*40 & 41 Vic. c. 26; \*42 & 43 Vic. c. 76; \*43 & 44 Vic. c. 19; \*46 & 47 Vic. c. 30; 53 & 54 Vic. c. 62; 53 & 54 Vic. c. 63; 53 & 54 Vic. c. 64; 56 & 57 Vic. c. 58; 61 & 62 Vic. c. 26<sup>2</sup>).

Sale of Goods, 56 & 57 Vic. c. 71<sup>3</sup>).

Factors, 52 & 53 Vic. c. 45.

\*Bills of Lading, 18 & 19 Vic. c. 111.

\*Bills of Exchange, 45 & 46 Vic. c. 61<sup>4</sup>).

### **Partnership.**

#### **Cons. Laws, 1887, c. 21.<sup>5</sup>)**

**Guarantee in the case of a firm. 7.** No promise to answer for the debt, default or miscarriage of another made to a firm consisting of two or more persons, or to a single person trading under the name of a firm, and no promise to answer for the debt, default, or miscarriage of a firm consisting of two or more persons, or of a single person trading under the name of a firm shall be binding on the person making such promise in respect of anything done, or omitted to be done, after a change shall have taken place in any one or more of the persons constituting the firm, or in the person trading under the name of a firm, unless the intention of the parties that such promise shall continue to be binding notwithstanding such change, shall appear either by express stipulation or by necessary implication from the nature of the firm or otherwise.

Cp. Imp. Partnership Act, 1890, (53 & 54 Vic. c. 39) § 18.

**Meaning of "person." 16.** In the construction of the four next following sections of this chapter the word "person" shall include a partnership firm, a joint stock company, and a corporation.

**Advance by way of loan at interest varying with profits not to constitute partnership. 17.** The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract, oral or in writing, with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not, of itself, constitute the lender a partner with the person or the persons carrying on such trade or undertaking, or render him responsible as such.

Cp. Imp. Partnership Act, 1890, (53 & 54 Vic. c. 39) § 2 (3) (d).

<sup>1</sup>) See also below. — <sup>2</sup>) See also p. 757 *infra*. — <sup>3</sup>) See also p. 757 *infra*. — <sup>4</sup>) Post-dated cheques are regarded as bills of exchange payable on the date they bear. Crossed cheques are not in use. — <sup>5</sup>) Only the sections relating to partnership are herein reprinted. By virtue of Cons. Laws, 1887, c. 7, as amended by No. 14 of 1899, and subject to the limitations therein contained, the Imperial Partnership Act, 1890, (53 & 54 Vic. c. 39) is in force.

\* Those marked with an asterisk are also set forth in the schedule of Imperial Acts probably in force in the Colony, prepared by Chief Justice Goodman, and annexed to the Consolidated Laws, 1887.



**Salary by share of profits. 18.** No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking, by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, or give him the right of a partner.

Cp. Imp. Partnership Act, 1890, (53 & 54 Vic. c. 39) § 2 (3) (b).

**Annuity of widow or child of deceased partner. 19.** No person being the widow or child of the deceased partner of a trader and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of, or to be subject to any liabilities incurred by such trader.

Cp. Imp. Partnership Act, 1890, (53 & 54 Vic. c. 39) § 2 (3) (c).

**Share of profits as price of good-will. 20.** No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the goodwill of such business, shall, by reason only of such receipt, be deemed to be a partner of, or be subject to the liabilities of the person carrying on such business.

Cp. Imp. Partnership Act, 1890, (53 & 54 Vic. c. 39) § 2 (3) (e).

**Postponement of claim in case of insolvency, etc. 21.** [As amended by No. 14 of 1901, § 37 (9)]. In the event of any such trader as aforesaid being adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of any such money as aforesaid shall not be entitled to recover any portion of his principal, or of the profits or interest payable in respect of such loan, nor shall any vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid, until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied.

Cp. Imp. Partnership Act, 1890, (53 & 54 Vic. c. 39) § 3. As to bankruptcy of partnerships, see Bankruptcy Ordinance, 1901, and the amendments thereof, reprinted *infra*, pp. 759.

## Companies.

### Cons. Laws, 1887, c. 87.<sup>1)</sup>

**The Imperial Companies Acts extended to the Colony. 1.** The following Acts of the Imperial Parliament are declared to be in force in the Colony, that is to say: 25 & 26 Vic. c. 89; 30 & 31 Vic. c. 131; 40 & 41 Vic. c. 26; 42 & 43 Vic. c. 76; 42 & 43 Vic. c. 76; 43 & 44 Vic. c. 19. Provided that the said Imperial Acts shall be read and construed in the manner provided in chapter 7.

**Registrar and office. 2.** The Registrar of the Supreme Court shall be the Registrar of Companies, and his office shall be the registry office, and, unless and until any new rules and tables of fees are framed, the fees hitherto in force under the *Honduras Company Act, 1866*, shall be payable as heretofore.

These fees are still in force.

**Rules and fees. 3.** The Governor in Council may make rules for the more effectual working of the said Imperial Acts in this Colony, and may frame tables of fees. Such rules and fees shall, after publication in the *Gazette*, be as binding as if incorporated in this chapter.

## Sale of Goods.

### Cons. Laws, 1887, c. 21.<sup>2)</sup>

**Contract for the sale of goods for £10 or more. 8.** No contract for the sale of any goods, wares, and merchandises for the price of ten pounds sterling or upwards

<sup>1)</sup> By virtue of Cons. Laws, 1887, c. 7, as amended by No. 14 of 1899, and by this section, and subject to the limitations imposed by these enactments, the following Imperial Acts relating to companies are in force in the Colony: 25 & 26 Vic. c. 89; 30 & 31 Vic. c. 131; 40 & 41 Vic. c. 26; 42 & 43 Vic. c. 76; 43 & 44 Vic. c. 19; 46 & 47 Vic. c. 62; 53 & 54 Vic. c. 62; 53 & 54 Vic. c. 63; 53 & 54 Vic. c. 64; 56 & 57 Vic. c. 58; 61 & 62 Vic. c. 26. Companies are not subject to the general provisions of the Bankruptcy Ordinance, 1901, but they are subject to the provisions of section 37 thereof relating to preferential payments in a winding-up.

— <sup>2)</sup> Only the section relating to sale of goods is herein reprinted. By virtue of Cons. Laws,

shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized, and the enactments of this section shall extend to all contracts for the sale of goods of the value of ten pounds sterling and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

Cp. Imp. Statute of Frauds, (29 Chas. 2, c. 3) § 17, Sale of Goods Act, 1893 (56 & 57 Vic. c. 71) § 4.

### Importation of Sugar.

**No. 18 of 1904. An Ordinance to give Effect to the Provisions of the Sugar Convention, signed the 5th day of March, 1902 (27th October, 1904).**

#### *Summary.*

**Short title. 1—6.** *The Sugar Convention Ordinance, 1904.* This Ordinance authorizes the Governor in Council to prohibit the importation or bringing into the Colony of sugar from any foreign country not being a party to the Sugar Convention of 1902, and in which from the report of the Permanent Commission, or from other evidence, the Governor in Council is satisfied that a direct or indirect bounty is granted on the production or exportation of sugars. Sugar imported or brought into the Colony in violation of such prohibition order is liable to seizure and destruction. The Ordinance does not apply to molasses nor glucose, nor to sugar in transit through the Colony, except as to proof of the latter fact. The Governor in Council is authorized to make the necessary rules to carry the Ordinance into effect.

### Public Holidays.

**No. 7 of 1903. An Ordinance to regulate the Hours during which Public Offices shall be open (6th July, 1903).**

**Repeal. 1.** Ordinance No. 13 of 1897 is hereby repealed.

**Public office hours. 2.** The public offices, including the Commissioners' Courts, shall be open daily throughout the year, during such hours as the Governor in Council may from time to time direct, except upon the following days, namely: Sundays, the birthday of the sovereign, the birthday of the heir to the throne, Victoria Day (the twenty-fourth day of May), St. George's Cay Day (the tenth day of September), New Year's Day, Good Friday, Christmas Day, and every other day or part of a day which the Governor in Council may (upon any occasion of national or local interest) direct to be celebrated and kept as a public holiday.

**Power to alter day appointed for public holiday. 3.** Whenever either of the royal birthday aforesaid, Victoria Day, St. George's Cay Day, New Year's Day, or Christmas Day shall fall on Sunday, the following day shall be observed and kept as a public holiday: Provided always that it shall be lawful for the Governor,

1887, c. 7, as amended by No. 14 of 1899, and subject to the limitations therein contained, the *Imperial Sale of Goods Act, 1893*, (56 & 57 Vic. c. 71) is in force since 20th February, 1895. On the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has been applied, the vendor is deemed to warrant that the mark is a genuine trade mark, and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of the *Merchandise Marks Ordinance, 1888*, unless the contrary is expressed in some writing signed by or on behalf of the vendor, and delivered at the time of the sale or contract to and accepted by the vendee. — Ord. No. 3 of 1888, § 15. The sale of poisons is regulated by Ord. No. 17 of 1889, and Ord. No. 16 of 1908.



when he shall deem the same expedient, to direct that any of the last mentioned public holidays shall be celebrated and kept on any day (not being Sunday) that shall be appointed, other than that on which it would otherwise be kept.

**Saving as to Supreme Court and Customs.** Nothing herein contained shall be construed to alter or affect the powers of the Chief Justice under any law to appoint the hour of sitting of the Supreme Court, or to order any adjournment thereof; or to alter or affect the performance of any duty which may be incident to any public office, or to alter or affect the power vested in the Collector of Customs by section 6 of chapter 92 of "The Consolidated Laws of British Honduras."

## Bankruptcy.

### No. 14 of 1901. The Bankruptcy Ordinance, 1901 (10th July, 1901).<sup>1)</sup>

#### *Preliminary.*

**Short title.** 1. This Ordinance may be cited as *The Bankruptcy Ordinance, 1901.*  
Imp. § 1.

**Commencement of Ordinance.** 2. This Ordinance shall, except as herein otherwise provided, come into operation on such day as the Governor may appoint by proclamation in that behalf published in the *Gazette*.

Imp. § 3. The Ordinance came into force on 1st August, 1902. — Proclamation, *Gazette*, 7th January, 1902.

**Interpretation of terms.** 3. 1. In this Ordinance, unless the context otherwise requires: "The Court" means the Supreme Court. "Affidavit" includes statutory declaration and affirmation. "Available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made. "Bailiff" includes any officer charged with the execution of a writ or other process. "Debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Ordinance made provable in bankruptcy. "Gazetted" means published in the *Gazette*. "General rules" includes forms. "Goods" includes all chattels personal. "Oath" includes affirmation and statutory declaration. "Ordinance" means any act or ordinance in force in the Colony. "Ordinary resolution" means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution. "Person" includes a body of persons corporate or unincorporate. "Prescribed" means prescribed by general rules within the meaning of this Ordinance. "Property" includes money, goods, things in action, land and every description of property, whether real or personal and whether situate in the Colony or elsewhere; also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined. "Registrar" means the Registrar General. "Registry" means the office of the Registrar General in his capacity as Registrar of the Supreme Court. "Resolution" means ordinary resolution. "Secured creditor" means a person holding a mortgage, charge or lien on the property of the debtor, or any part thereof, which by the law of this Colony is valid against creditors as a security for a debt due to him from the debtor and includes a judgment creditor. "Schedule" means schedule to this Ordinance. "Special resolution" means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution. "Trustee" means the trustee in bankruptcy of a debtor's estate. 2. The Schedules to this Ordinance shall be construed and have effect as part of this Ordinance.

Imp. § 168.

#### *Part I. Proceedings from Act of Bankruptcy to Discharge.*

##### *Acts of bankruptcy.*

**Acts of bankruptcy. Bankruptcy notice.** 4. 1. A debtor commits an act of bankruptcy in each of the following cases: a) If in the Colony or elsewhere he makes a

<sup>1)</sup> The references (Imp.) are to the Imperial *Bankruptcy Act, 1883*, (46 & 47 Vic. c. 52), unless otherwise indicated.

conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally; b) If in the Colony or elsewhere he makes a fraudulent conveyance, gift, delivery or transfer of his property or of any part thereof; c) If in the Colony or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this or any other Ordinance be void as a fraudulent preference if he were adjudged bankrupt; d) If with intent to defeat or delay his creditors he does any of the following things, namely: departs out of the Colony, or, being out of the Colony, remains out of the Colony, or departs from his dwelling-house or otherwise absents himself or begins to keep house; e) If execution against him has been levied by seizure of his goods under process in an action in any court and the goods have been either sold or held by the bailiff for twenty-one days. Provided that when an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the bailiff is ordered to withdraw or any interpleader issue ordered thereon is finally disposed of shall not be taken into account in calculating such period of twenty-one days; f) If he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself; g) If a creditor has obtained a final judgment against him for any amount, and, execution thereon not having been stayed, has served on him in the Colony, or, by leave of the Court, elsewhere, a bankruptcy notice under this Ordinance requiring him to pay the judgment debt in accordance with the terms of the judgment or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not within fifteen days after service of the notice, in case the service is effected in the Colony and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice, or satisfy the Court that he has a counter-claim, set-off or cross-demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained. Any person who is for the time being entitled to enforce a final judgment shall be deemed a creditor who has obtained a final judgment within the meaning of this section; h) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts. 2. A bankruptcy notice under this Ordinance shall be in the prescribed form, and shall state the consequences of non-compliance therewith and shall be served in the prescribed manner.

Imp. § 4.

5. = Imp. § 5, except: "Ordinance" is substituted for "Act."

6. = Imp. § 6, except: in (1) "two hundred and fifty dollars" is substituted for "fifty pounds," and "the Colony" is substituted for "England."

7. = Imp. § 7, except: in (1) "shall be" is inserted before "served in the prescribed manner."

8. = Imp. § 8.

9. = Imp. § 9, except: in (1) "the official receiver" is substituted for "an official receiver," "Ordinance" for "Act," and "legal proceeding" for "legal proceedings."

10—11. = Imp. §§ 10—11.

12. = Imp. § 12, except: in (1) "of a debtor's estate" is omitted; in (2) "official receiver" is substituted for "Board of Trade."

13. = Imp. § 13, except: "the Court by which the order is made" is omitted.

#### *Proceedings consequent on order.*

14. = Imp. § 15, except: "Ordinance" is substituted for "Act."

15. = Imp. § 16, except: in (2) "seven days" is substituted for "three days," and "fifteen days" for "seven days."

#### *Public examination of debtor.*

16. = Imp. § 17, except: in (5) "Court" is substituted for "Board of Trade," and "with or without counsel" is omitted; in (8) "on oath" is substituted for "upon oath," and "or by the debtor" is inserted after "read over to;" a new subsection is added: "(10) Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, the Court may make an order dispensing with such



examination or directing that the debtor be examined on such terms, in such manner, and at such place as to the Court seems expedient."

*Composition or scheme of arrangement.*

**Composition or scheme of arrangement. 17.** 1. Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs or within such time thereafter as the official receiver may fix, lodge with the official receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed. 2. In such case the official receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal with a report thereon; and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors, and when approved by the Court shall be binding on all the creditors. 3. The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the official receiver, calculated to benefit the general body of creditors. 4. Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver, so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting. 5. The debtor or the official receiver may, after the proposal is accepted by the creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved. 6. The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the Court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal. 7. The Court shall, before approving the proposal, hear a report of the official receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor. 8. If the Court is of opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, or in any case in which the Court is required where the debtor is adjudged bankrupt to refuse his discharge, the Court shall refuse to approve the proposal. 9. If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge were he adjudged bankrupt, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than forty per centum on all the unsecured debts provable against the debtor's estate. 10. In any other case, the Court may either approve or refuse to approve the proposal. 11. If the Court approves the proposal, the approval may be testified by the seal of the Court being attached to the instrument, containing the terms of the proposed composition or scheme or by the terms being embodied in an order of the Court. 12. A certificate of the official receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity. 13. The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court. 14. If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme can not, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by the official receiver or the trustee, or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in bankruptcy. 15. If under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property

or manage his business, or to distribute the composition, section 26 and Part. V. of this Ordinance shall apply as if the trustee were a trustee in a bankruptcy, and as if the terms "bankruptcy," "bankrupt," and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and order approving the composition or scheme. 16. Part III. of this Ordinance shall so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee," "bankruptcy," "bankrupt," and "order of adjudication" as in the last preceding subsection. 17. No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of the bankrupt. 18. The acceptance by a creditor of a composition or scheme shall not release any person who under this Ordinance would not be released by an order of discharge if the debtor had been adjudged bankrupt. 19. A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability.

Imp. § 18. See also Ord. No. 23 of 1907, § 4, *infra*.

18. = Imp. § 19, except: "Ordinance" is substituted for "Act."

#### *Adjudication of bankruptcy.*

19. = Imp. § 20, except: in (1) "Ordinance" is substituted for "Act," in (2) "and" is inserted between "bankrupt" and "the date," and "and the court by which the adjudication is made" is omitted, "purpose" is substituted for "purposes," and "Ordinance" for "Act."

20. 1. = Imp. § 21 (1) 2. A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty. 3. = Imp. § 21 (2), except: "Court" is substituted for "Board of Trade," and for "Board," "unless it is of opinion that the appointment" is substituted for "unless they object to the appointment on the ground that it." 4. = Imp. § 21 (4). 5. = Imp. § 21 (5), except: "Ordinance" is substituted for "Act." 6. = Imp. § 21 (6), except: "Court and the Court shall thereupon appoint," is substituted for "Board of Trade and thereupon the Board of Trade shall appoint." 7. = Imp. § 21 (7), except: "Court" is substituted for "Board of Trade." 8. = Imp. § 21 (8).

21. = Imp. § 22, except: in (1) "qualified to vote" is omitted, and the following is inserted at the end of the subsection: "but a creditor who is appointed a member of a committee of inspection shall not be qualified to act until he has proved his debt, and the proof has been admitted;" in (8) "within their body" is substituted for "in their body;" in (9) "Ordinance" is substituted for "Act" and "Court" for "Board of Trade."

22. = Imp. § 23, except: in (1) "by special resolution" is omitted, and "and such resolution shall be the like resolution as is required for accepting a like proposal made by a debtor before an adjudication of bankruptcy" is inserted after "bankrupt's affairs;" in (3) "it appear" is substituted for "it appears."

#### *Control over person and property of debtor.*

23. = Imp. § 24, except: in (4) "among" is substituted for "amongst" and "Ordinance" for "Act."

24. = Imp. § 25, except: in (1) (a) "Ordinance" is substituted for "Act," and "has absconded or" is inserted before "is about to abscond;" in (1) (c) "twenty-five dollars" is substituted for "five pounds;" in (2) "Ordinance" is substituted for "Act."

25. = Imp. § 26, except: "postmaster" is substituted for "Postmaster-General."

26. = Imp. § 27, except: in (1) "document" is substituted for "documents;" in (6) "the Colony" is substituted for "England", and "in any place out of the Colony" for "in Scotland or Ireland, or in any place out of England."



*Discharge of bankrupt.*

**Discharge of bankrupt. 27.** 1. A bankrupt may, at any time after being adjudged bankrupt, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall be heard in open Court. 2. On the hearing of the application the Court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy) and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt or with respect to his after-acquired property; Provided that the Court shall refuse the discharge in all cases where the bankrupt has committed any offence under this Ordinance or under chapter 109 of the Consolidated Laws, or any other offence connected with his bankruptcy, unless for special reasons the Court otherwise determines, and shall, on proof of any of the facts hereinafter mentioned, either: i) Refuse the discharge; or ii) Suspend the discharge for a period of not less than two years; or iii) Suspend the discharge until a dividend of not less than fifty per centum has been paid to the creditors; or iv) Require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct; but execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts. Provided, that if at any time after the expiration of two years from the date of any order made under this section, the bankrupt shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit. 3. The facts hereinbefore referred to are: a) That the bankrupt's assets are not of a value equal to fifty per centum of the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to fifty per centum on the amount of his unsecured liabilities has arisen from circumstances for which he can not justly be held responsible; b) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy; c) That the bankrupt has continued to trade after knowing himself to be insolvent; d) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it; e) That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities; f) That the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs; g) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him; h) That the bankrupt has within three months preceding the date of the receiving order incurred unjustifiable expense by bringing a frivolous or vexatious action; i) That the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors; j) That the bankrupt has within three months preceding the date of the receiving order incurred liabilities with a view of making his assets equal to fifty per centum of the amount of his unsecured liabilities; k) That the bankrupt has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors; l) That the bankrupt has been guilty of any fraud or fraudulent breach of trust. 4. For the purposes of this section a bankrupt's assets shall be deemed of a value equal to fifty per centum of the amount

of his unsecured liabilities when the Court is satisfied that the property of the bankrupt has realized, or is likely to realize, or with due care in realization might have realized, an amount equal to fifty per centum of his unsecured liabilities, and a report by the official receiver or the trustee shall be prima facie evidence of the amount of such liabilities. 5. For the purposes of this section, the report of the official receiver shall be prima facie evidence of the statements therein contained. 6. Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the Court may hear the official receiver and the trustee, and may also hear any creditor. At the hearing the Court may put such questions to the debtor and receive such evidence as it may think fit. 7. The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently. 8. A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realization and distribution of such of his property as is vested in the trustee, and if he fail to do so, he shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, subsequent to the discharge but before its revocation.

Imp. § 28.

28. [As amended by No. 17 of 1901, § 3] = Imp. § 29.

29. = Imp. § 30, except: in (1) "or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence" is omitted, "Governor" is substituted for "Treasury," and "his consent" for "their consent;" in (3) "Ordinance" is substituted for "Act;" a new subsection is added: "(5) An order for discharge shall not release the bankrupt from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability."

30. = Imp. § 31, except: "this Ordinance" is substituted for "this Act," "one hundred dollars" for "twenty pounds," "an offence under chapter 109 of the Consolidated Laws" for "a misdemeanour under the *Debtors Act, 1869*", and "that chapter" for "that Act."

## *Part II. Disqualifications of Bankrupt.*

**Disqualification of bankrupt. 31.** [As amended by No. 17 of 1901, § 3.] 1. Where a debtor is adjudged bankrupt he shall, subject to the provisions of this Ordinance, be disqualified for: a) Being appointed to, or sitting or voting in the Legislative Council or any committee thereof as an unofficial member; b) Being appointed or acting as a justice of the peace. 2. The disqualifications to which a bankrupt is subject under the section shall be removed and cease if and when: a) The adjudication of bankruptcy against him is annulled; or b) He obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part. The Court may grant or withhold such certificate as it thinks fit. 3. No disqualification arising by virtue of this section shall exceed a period of five years from the date of any discharge granted under and by virtue of this Ordinance.

Imp. §§ 32—34.

32. = Imp. § 35, except: in (1) the beginning word is "when" instead of "where;" in (2) the beginning word is "when" instead of "where," and "in such terms" is substituted for "on such terms."

33. = Imp. § 36, except: "the Ordinance" is substituted for "this Act."

## *Part III. Administration of Property.*

### *Proof of debts.*

34. = Imp. § 37, except: in (6) and in (8) "Ordinance" is substituted for "Act."

35. = Imp. § 38, except: "Ordinance" is substituted for "Act," and "any act of bankruptcy committed" for "an act of bankruptcy committed."

36. = Imp. § 39.

**Priority of debts. 37.** 1. In the distribution of the property of a bankrupt and in the distribution of the assets of any company being wound up under the



provisions of any law in force in the Colony relating to companies there shall be paid in priority to all other debts: a) All local rates, land and property or other tax due from the bankrupt or the company at the date of the receiving order or as the case may be the commencement of the winding-up and having become due and payable within twelve months next before such time; b) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt or the company during four months before the date of the receiving order or, as the case may be, the commencement of the winding-up not exceeding two hundred and fifty dollars; and c) All wages of any labourer or workman not exceeding one hundred and twenty-five dollars whether payable for time or piece work, in respect of services rendered to the bankrupt or the company during the six months before the date of the receiving order or, as the case may be, the commencement of the winding-up. Provided that where any labourer has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the term of hiring he shall have priority in respect of the whole of such sum or part thereof as the Court may decide to be due under the contract proportionate to the time of service up to the date of the receiving order, or, as the case may be, the commencement of the winding-up. 2. The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is or the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions between themselves. 3. Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith, so far as the property of the debtor, or the assets of the company, as the case may be, is or are sufficient to meet them. 4. In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt or a company being wound up within three months next before the date of the receiving order or the winding-up order respectively, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof: Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made. 5. This section shall apply in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order. 6. In the case of partners, the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate. 7. Subject to the provisions of this Ordinance all debts proved in the bankruptcy shall be paid *pari passu*. 8. If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order or, as the case may be, the commencement of the winding-up at the rate of six per centum per annum on all debts proved in the bankruptcy, or the winding-up. [9. Amends Cons. Laws, 1887, c. 21, § 21, and is there incorporated.] [10. Amends Cons. Laws, 1887, c. 88, § 24, relating to friendly societies.]

Imp. Preferential Payments in Bankruptcy Act, 1888, (51 & 52 Vic. c. 62).

38. = Imp. § 42, except: in (1) "six months' rent" is substituted for "one year's rent;" in (2) "of a debtor whose debts do not exceed fifty pounds or," is omitted.

*Property available for payment of debts.*

39. = Imp. § 43.

40. = Imp. § 44, except: "Ordinance" is substituted for "Act," "in trust" for "on trust," and "one hundred dollars" for "twenty pounds;" "except the right of nomination to a vacant ecclesiastical benefice" is omitted.

*Effect of bankruptcy on antecedent transactions.*

41. = Imp. § 45, except: in (1) "against goods of a debtor, or has attached" is substituted for "against the goods or lands of a debtor, or has attached;" (2) reads as follows: "For the purposes of this Ordinance, an execution against goods is completed by seizure and sale and an attachment of a debt by receipt of the debt."

**Duties of bailiff as to goods taken in execution. 42.** 1. Where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a receiving order has been made against the debtor, the bailiff shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution, to the official receiver or trustee but the costs of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge. 2. Where under an execution in respect of a judgment for a sum exceeding one hundred dollars, the goods of a debtor are sold or money is paid in order to avoid sale, the bailiff shall deduct his costs of the execution from the proceeds of sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor thereon, or on any other petition of which the bailiff has notice, the bailiff shall pay the balance to the official receiver or, as the case may be, to the trustee who shall be entitled to retain the same as against the execution creditor. 3. An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the bailiff shall in all cases acquire a good title to them against the trustee in bankruptcy.

Imp. § 53.

43. = Imp. § 47, except: in (1) "the" is omitted before "bankruptcy" in both instances, and "become bankrupt" is substituted for "becomes bankrupt;" in (2) "trustee in bankruptcy" is substituted for "trustee in the bankruptcy."

44. = Imp. § 48, except: in (1) "trustee in bankruptcy" is substituted for "trustee in the bankruptcy."

45. = Imp. § 49, except: "Ordinance" is substituted for "Act" in both instances.

*Realization of property.*

46. = Imp. § 50 (1—3, 5, 6), except: in (2) "Court" is substituted for "High Court."

47. = Imp. § 51, except: the following is added at the end of the section "in manner prescribed or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law."

**Appropriation of portion of pay or salary to creditors. 48.** 1. Where a bankrupt is an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the Governor, may direct. Before making an order under this subsection the Court shall communicate with the Governor as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the Governor to the terms of such payment. 2. Where a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay, or pension, the Court, on the application of the trustee, shall from time to time, make such order as it thinks just for the payment of the salary, income, half-pay or pension or of any part thereof, to the trustee to be applied by him in such manner as the Court may direct.

Imp. § 53.

49. = Imp. § 54, except: in (1) "Ordinance" is substituted for "Act;" in (4) "in force in any part of the British dominions" is omitted, and "registered or recorded" is substituted for "registered, enrolled, and recorded."

50. = Imp. § 55, except: in (1) "twelve months" is substituted for "three months," and for "two months," "or within such further time as may be allowed by the Court" is inserted before "after the first appointment" and before "after he first became aware thereof;" in (6) "Ordinance" is substituted for "Act," and the following is added at the end of the subsection: "Provided, however, that the Court may, if it thinks fit, modify the terms prescribed in the foregoing proviso so as to make the person in whose favour the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when



the bankruptcy petition was filed, and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order."

51. = Imp. § 56, except: throughout "Ordinance" is substituted for "Act."

52. = Imp. § 57, except: subsections (8) and (7) of the Imperial Act constitute respectively subsections (7) and (8) of the Ordinance.

*Distribution of property.*

53—56. = Imp. §§ 58—61.

57. = Imp. § 62, except: "before doing so" is substituted for "before so doing."

58. = Imp. § 63, except: "that" is omitted before "it is withheld."

59. = Imp. § 64.

60. = Imp. § 65, except: "Ordinance" is substituted for "Act."

*Part IV. Official Receivers.*

**Appointment by the Governor of official receiver of debtors' estates.** 61. 1. The Governor may, at any time after the passing of this Ordinance, and from time to time appoint such person as he may think fit to be the official receiver of debtors' estates, and may remove any person so appointed from such office. The official receiver of debtors' estates shall be an officer of the Court. 2. The Court may, on the application of the official receiver, at any time appoint some fit person or persons to be the deputy or deputies of the official receiver, under such conditions as to remuneration and otherwise as may be prescribed.

62. = Imp. § 68, except: in (2) "the official receiver" is substituted for "an official receiver," and "Ordinance" for "Act;" in (3) "this Ordinance" is substituted for "the Act;" in (4) "Ordinance" is substituted for "Act."

63. = Imp. § 69, except: in (1) "an offence under chapter 109 of the Consolidated Laws, or under this Ordinance" is substituted for "a misdemeanour under the Debtors Act, 1869, or any amendment thereof, or under this Act." (2) reads as follows: "To make such other reports concerning the conduct of the debtor, to take such part in the public examination of the debtor and to take such part and give such assistance, in relation to the prosecution of any fraudulent debtor, as the Court may in each of such cases direct."

Any person shall in each of the cases following be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any time not exceeding one year, with or without hard labour, that is to say: (1) if in incurring any debt or liability he has obtained credit under false pretenses, or by means of any other fraud; (2) if he has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of, or any charge on his property; (3) if he has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him. — Cons. Laws, 1887, c. 109, § 6. See also Ord. No. 23 of 1907, § 2, *infra*.

64. = Imp. § 70, except: in (2) "Court" is substituted for "High Court", and for "Board of Trade;" (3) and (4) read as follows: (3) "The official receiver shall account to the Court and pay over all money and deal with all securities in such manner as the Court from time to time may direct. (4) The official receiver shall not, during his continuance in office, either directly or indirectly, by himself, his clerk, or partner, act as solicitor in any proceeding in bankruptcy or in any prosecution of a debtor by order of the Court, and if he does so act he shall be liable to be dismissed from office."

*Part V. Trustees of Bankruptcy.*

*Remuneration of trustee.*

65. = Imp. § 72, except: in (1) "by the trustee" is inserted after "amount realized;" in (2) "Court" is substituted for "Board of Trade" in both places where the latter words occur. (4) reads as follows: "Where a trustee acts without remuneration he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the Court, approve."

*Costs.*

66. = Imp. § 73, except: in (1) "by statute or rules" is omitted; in (3) "Registrar" is substituted for "prescribed officer," and for "taxing master;" (4) reads as follows: "The sanction required under the preceding subsection for the employ-

ment of solicitors and other persons must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shewn that no undue delay took place in obtaining the sanction;" in (5) [= Imp. § 73 (4)] "Registrar" is substituted for "proper officer."

*Receipts, payments, accounts, audit.*

**Trustee to pay moneys into Treasury. 67.** 1. Every trustee shall, save as in the next subsection provided, pay into the Treasury to a deposit account all moneys received by him as such trustee and the Treasurer is hereby authorized to receive the same and grant receipts therefor. All monies so paid into the Treasury shall be repayable to the trustee as he may require the same subject to his giving proper receipts. 2. If a trustee at any time retains for more than ten days a sum exceeding two hundred and fifty dollars, or such other amount as the Court in any particular case may authorize him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum, and shall have no claim for remuneration and may be removed from his office.

Imp. § 74.

**Audit of trustee's accounts. 68.** 1. Every trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, file in the Registry an account of his receipts and payments as such trustee; the account shall be in the prescribed form, and shall be verified by a statutory declaration in the prescribed form. 2. The Registrar shall audit the account and the trustee shall furnish the Registrar with such vouchers and information as the Registrar may require, and the Registrar may at any time require the production of and inspect any books or accounts kept by the trustee. Such account shall be open to the inspection of any creditor, or of the bankrupt or of any person interested.

69. = Imp. § 80.

*Release of trustee.*

**70.** = Imp. § 82, except: in (1) "the Registrar shall on his application prepare a report on his accounts, which shall be submitted to the Court; and the Court shall take into consideration the report and any objection, which may be urged by any creditor or person interested against his release, and shall either grant or withhold the release accordingly" is substituted for the part of the subsection beginning with "the Board of Trade" and ending with "High Court;" in (3) "Court" is substituted for "Board."

*Official name.*

**71.** = Imp. § 83, except: "in any part of the British Dominions or elsewhere" is omitted.

*Appointment and removal.*

**72.** = Imp. § 84, except: in (1) "Ordinance" is substituted for "Act;" in (2) "Court" is substituted for "Board of Trade."

**73.** = Imp. § 85.

**74.** = Imp. § 86, except: in (1) "ordinary" is omitted before "resolution;" (2) reads as follows: "If the Court is of opinion that a trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties under this Ordinance, the Court may remove him from his office;" a new subsection is added as follows: "(3) The power of the Court to remove a trustee shall extend to any case in which the Court is of opinion that the trustee is, by reason of lunacy, or continued sickness, or absence, incapable of performing his duties, or that his connexion with or relation to the bankrupt or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interest of the creditors generally, or where in any other matter he has been removed from office on the ground of misconduct."

**75.** = Imp. § 87 (1, 2, 4).

*Voting powers of trustee.*

**76.** = Imp. § 88, except: "or solicitor" is substituted for "solicitor or solicitor's clerk."

*Control over trustee.*

**77.** = Imp. § 89, except: in (1) "Ordinance" is substituted for "Act;" in (2) "or whenever requested in writing to do so by one-fourth in value of the creditors" is omitted; in (4) "Ordinance" is substituted for "Act."



78. = Imp. § 90, except: "his creditors" is substituted for "the creditors," and "thinks fit" for "thinks just."

## *Part VI. Procedure and Powers of Court.*

### *Jurisdiction.*

**Exercise of jurisdiction in chambers.** 79. Subject to the provisions of this Ordinance and to general rules the Court may exercise in chambers the whole or any part of its jurisdiction.

Imp. § 98.

**General powers of the Court.** 80. [As amended by No. 17 of 1901, § 3.] 1. Subject to the provisions of this Ordinance, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or of fact, which may arise in any case of bankruptcy coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case. 2. If in any proceeding in bankruptcy there arises any question of fact which either of the parties desires to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may if it thinks fit direct the trial to be had by a jury, and the trial may be had accordingly in the same manner as if it were the trial of an issue of fact in an action. 3. When default is made by a trustee, debtor or other person in obeying any order or direction given by the Court, the Court may on the application of the official receiver order such defaulting trustee, debtor or person to comply with the order or direction so given; and the Court may also, if it shall think fit, upon any such application make an immediate order for the committal of such defaulting trustee, debtor or other person: Provided that the power given by this subsection shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default. 4. When under section 3 of chapter 109 of the Consolidated Laws application is made by a judgment creditor, the Court may, if it thinks fit, decline to commit, or in lieu thereof with the consent of the judgment creditor, and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made.

Imp. § 102. Cons. Laws, 1887, c. 109, § 3 relates to the cases where a court may commit a debtor to prison.

### *Procedure.*

81. = Imp. § 105, except: in (1) "Ordinance" is substituted for "Act" in both instances, and "Court" for "Judge before whom such issue is tried;" in (3) and (4) "Ordinance" is substituted for "Act;" in (6) "joint" is omitted between "such" and "debtor."

82. = Imp. § 106.

**Property of partners to be vested in same trustee.** 83. Where a receiving order has been made on a bankruptcy petition against or by one member of a partnership and any other bankruptcy petition is presented against or by a member of the same partnership, the same trustee or receiver shall, unless the Court otherwise directs, be appointed in respect of the property of the last mentioned member of the partnership as may have been appointed in respect of the property of the first mentioned member of the partnership, and the Court may give such directions for consolidating the proceedings under the petition as it thinks just.

Imp. § 112.

84. = Imp. § 107, except: "in his petition" is substituted for "on his petition," and "Ordinance" for "Act."

85—90. = Imp. §§ 108—111, 113, 114.

91. = Imp. § 115, except: "Ordinance in the name of the firms" is substituted for "Act in the name of the firm."

## *Part VII. Small Bankruptcies.*

92. = Imp. § 121, except: in the introductory paragraph "fifteen hundred dollars" is substituted for "three hundred pounds," and "Ordinance" for "Act;" in (2) "court" is substituted for "Board of Trade;" in (3) "Ordinance" is substituted for "Act" in both instances.

*Part VIII. Miscellaneous.*

**Exclusion of partnerships and companies, etc.** 93. A receiving order shall not be made against any corporation or against any partnership or association, or company registered under any law in force in the Colony relating to companies.  
Imp. § 123.

94. (1), (2) = Imp. § 125 (1), (2). 3. A petition for administration under this section shall not be presented to the Court after proceedings have been commenced for the administration of the deceased debtor's estate, but the Court may in such case, if it is satisfied that the estate is insufficient to pay its debts, make an order in the prescribed manner, for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor. 4. Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver as trustee thereof, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Ordinance. 5. With the modifications hereinafter mentioned, all the provisions of Part III. of this Ordinance, relating to the administration of the property of a bankrupt, shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Ordinance. 6. In the administration of the property of the deceased debtor under an order of administration, the official receiver shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claim shall be deemed a preferential debt under the order and be payable in full, out of the debtor's estate, in priority to all other debts. 7. If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Ordinance in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed. 8. Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the official receiver; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration. 9. In cases of administration in bankruptcy, in pursuance of this section, of estates of persons dying insolvent, the creditors shall have the same powers as to appointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy and the provisions of this Ordinance relating to trustees and committees of inspection, shall apply to trustees and committees of inspection appointed under the power conferred by this section. 10. General rules, for carrying into effect the provisions of this section, may be made in the same manner and to the like effect and extent as in bankruptcy.

**Power to make, revoke, and alter general rules.** 95. 1. The Chief Justice may at any time after the passing of this Ordinance and from time to time make, revoke and alter general rules for carrying into effect the objects of this Ordinance, and may also from time to time prescribe a scale of fees and percentages to be charged for in respect of proceedings under this Ordinance. 2. All general rules made under the foregoing provisions of this section shall be laid before the Legislative Council within three weeks after they are made, if the Legislature is then sitting, and if the Legislative Council is not then sitting within three weeks after the beginning of the then next session of the Legislative Council, and shall be judicially noticed, and shall have effect as if enacted by this Ordinance.

Imp. § 127.

96. = Imp. § 133, except: in (1) "Ordinance" is substituted for "Act".

97. = Imp. § 136, except: "the Court" is substituted for "any court," and "Ordinance" for "Act."



**Statement or admission not admissible as evidence in certain criminal proceedings.** 98. A statement or admission made by any person in any compulsory examination or deposition before any Court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person in any proceeding in respect of any of the crimes specified in the following sections and subsections of the Criminal Code, viz: section 165, (i); section 171; section 174; section 177, (ii), (iii).

The offences set forth in the sections of the Criminal Code (Cons. Laws, 1887, c. 24a) referred to are: theft of anything of which the defendant had the custody, control, or possession, or to which he had the means of access by reason or any office, employment, or service; fraudulent breach of trust; falsification of accounts; and concealment, alteration, or falsification of any bill of lading, invoice, manifest, receipt, or similar document, or of accounts or documents relating to the affairs of any company or trust, or which he is under any duty to keep or deal with as the clerk or servant of another person.

99. = Imp. § 138, except: "Registrar" is substituted for "Board of Trade," and "Ordinance" for "Act."

**Formal defects not to invalidate proceedings.** 100. 1. No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court is of opinion that substantial injustice has been caused by the defect or irregularity. 2. No defect or irregularity in the appointment or election of a receiver, trustee, or member of a committee of inspection shall vitiate any act done by him in good faith.

Imp. § 143.

101. = Imp. § 132, except: in (1) "Gazette" is substituted for "London Gazette," and "Ordinance" for "Act;" in (2) "Gazette" is substituted for "London Gazette."

102. = Imp. § 134, except: in both instances "the Court" is substituted for "any court," and "having jurisdiction in bankruptcy" is omitted; "Ordinance" is substituted for "Act," and "the Registrar" for "any Registrar."

**Swearing of affidavits.** 103. Subject to general rules, any affidavit to be used in any bankruptcy proceeding may be sworn before any person authorized to administer oaths in the Supreme Court, or before a justice of the peace, or, in the case of a person who is out of the Colony, before a British minister or British Consul, before a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides (he being certified to be a magistrate or justice of the peace, or qualified as aforesaid by a British minister or British consul or by a notary public).

Imp. § 135.

**Computation of time.** 104. 1. Where by this Ordinance any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday, New Year's Day, Good Friday, Christmas Day, or a day appointed to be kept as a public holiday or a day on which the offices of the Court are closed, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in the section specified. 2. = Imp. § 141 (2), except: "Ordinance" is substituted for "Act."

Imp. § 141.

105. = Imp. § 142.

106. = Imp. § 145, except: "bailiff" is substituted for "sheriff," "one hundred dollars" for "twenty pounds," and "in the prescribed manner by the bailiff" for "by the sheriff."

**Application of Chapter 45 Consolidated Laws to bankruptcy of trustee.** 107. Where a bankrupt is a trustee within chapter forty-five of the Consolidated Laws, section fifteen of that chapter shall have effect so as to authorize the appointment of a new trustee in substitution for the bankrupt (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that chapter shall have effect accordingly.

Imp. § 147. Whenever it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the court, it shall be lawful for the court to make an order appointing a new trustee or new trustees,

either in substitution for or in addition to any existing trustee or trustees. — Cons. Laws, 1887, c. 45, § 15.

108. = Imp. § 148, except: "Ordinance" is substituted for "Act."

109. = Imp. § 150, except: "Ordinance" is substituted for "Act."

110. = Imp. § 162 (1, 3, 4), except: in (1) "Ordinance" is substituted for "Act," "Treasury" for "Bank of England," and "Treasurer" for "Board of Trade;" in (3) (= Imp. § 162 [4]) "Treasurer" is throughout substituted for "Board of Trade," and "Supreme Court" for "High Court;" a new subsection is added: "(4) The Treasurer may at any time after the coming into operation of this Ordinance open the account at the Treasury referred to in this Ordinance as the Bankruptcy Estates Account."

**The Court to act in aid of and auxiliary to certain Courts in United Kingdom.**

111. The Court and its officers shall act in aid of and be auxiliary to any Court in the United Kingdom having jurisdiction in bankruptcy, and shall give effect to the title of every receiver, trustee or assignee, in any proceeding in any such Court to any property of a person subject to such jurisdiction which is situate within the Colony; and any execution, attachment, or other process in the Colony against the property of such person which has not been completed before the date on which the title of such receiver, trustee or assignee, takes effect shall be void as against such receiver, trustee or assignee.

Imp. § 118.

112. = Imp. § 152, except: "Ordinance" is substituted for "Act," and "Imperial" is inserted after "1882."

## *Schedules.*

### *The First Schedule.*

#### **Meeting of creditors.**

1. = Imp. Sched. I., § 1, except: "one month" is substituted for "fourteen days."

2. = Imp. Sched. I., § 2, except: "fifteen days" is substituted for "seven days," and "Gazette" for "London Gazette."

3—4. = Imp. Sched. I., §§ 3—4.

5. = Imp. Sched. I., § 5, except: "one-sixth" is substituted for "one-fourth;" the following is added at the end of the section: "Provided that the creditors so requesting shall deposit with the trustee or the official receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to them out of the estate if the creditors or the Court so direct."

6. (As amended by No. 17 of 1901, § 3) = Imp. Sched. I., § 6.

7—9. = Imp. Sched. I., §§ 7—9.

10. = Imp. Sched. I., § 10, except: "the whole debt" is substituted for "his whole debt."

11—15. = Imp. Sched. I., §§ 11—15.

16. = Imp. Sched. I., § 16, except: the following is added at the end of the section: "or of any manager or clerk or other person in his regular employment or of any justice of the peace."

17. General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the official receiver, or of any other person, shall be printed or inserted in the body of any instrument or proxy before it is so sent.

18. = Imp. Sched. I., § 17.

19. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters: (a) For or against any specific proposal for a composition or scheme of arrangement; (b) For or against the appointment of any specified person as trustee at a specified rate of remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection. (c) On all questions relating to any matter, other than those above referred to, arising at any specified meeting or adjournment thereof.

20—21. = Imp. Sched. I., §§ 19—20.

22. = Imp. Sched. I., § 21, except: "of the debtor's estate" is omitted.

23—27. = Imp. Sched. I., §§ 22—26.

### *The Second Schedule.*

#### **Proof of Debts.**

#### *Proof in ordinary cases.*

1—7. = Imp. Sched. II., §§ 1—7.

8. = Imp. Sched. II., § 8, except: "six" is substituted for "five."



*Proof by secured creditors.*

9—12. = Imp. Sched. II., §§ 9—12.

13. = Imp. Sched. II., § 13, except: "trustee or court" is substituted for "trustee or the court."

14—16. = Imp. Sched. II., §§ 14—16.

17. = Imp. Sched. II., § 17, except: "one hundred cents in the dollar" is substituted for "twenty shillings in the pound."

*Proof in respect of distinct contracts.*

18. = Imp. Sched. II., § 18.

*Periodical payments.*

19. = Imp. Sched. II., § 19.

*Interest.*

20. = Imp. Sched. II., § 20, except: "creditors" is substituted for "creditor," and "six" for "four."

21. When a debt has been proved upon a debtor's estate, and such debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

*Debt payable at a future time.*

22. = Imp. Sched. II., § 21, except: "six per centum" is substituted for "five pounds per centum."

*Admission or rejection of proofs.*

23—26. = Imp. Sched. II., §§ 22—25.

27. = Imp. Sched. II., § 26, except: "this" is substituted for "his."

28. = Imp. Sched. II., § 27.

## **b) No. 17 of 1901. An Ordinance to amend The Bankruptcy Ordinance, 1901 (17th September, 1901).**

**Power of Supreme Court.** 1. The Supreme Court may review, rescind or vary any order made by it under *The Bankruptcy Ordinance, 1901*.

**Right of appeal to King in Council under certain terms and conditions, Chap. 8, Cons. Laws, to apply to every such appeal.** 2. Orders made by the Supreme Court under *The Bankruptcy Ordinance, 1901*, shall at the instance of any person aggrieved be subject to appeal to His Majesty in Council under such regulations and upon such terms and conditions as His Majesty in Council shall be pleased to establish. The provisions as to appeals contained in chapter 8 of the Consolidated Laws shall apply to every appeal made under this section in the same manner as if the person appealing or intending to appeal were a party to an action in the Supreme Court.

The provisions relating to appeals are given supra, p. 753.

3. [Amends No. 14 of 1901, supra, and is there incorporated.]

## **c) No. 23 of 1907. An Ordinance to amend The Bankruptcy Ordinance, 1901, (31st October, 1907).**

**Construction.** 1. This Ordinance shall be read and construed as one with Ordinance No. 14 of 1901, *The Bankruptcy Ordinance, 1901*, hereinafter referred to as the principal Ordinance.

**Penalty for certain offences committed by a person against whom a receiving order is made.** 2. Any person against whom a receiving order in bankruptcy has been or shall hereafter be made shall in each of the following cases be guilty of a misdemeanour, and shall be liable, on conviction thereof, to imprisonment, with or without hard labor, for any term not exceeding two years, that is to say: 1. If he does not to the best of his knowledge and belief fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property,

real and personal, and how, and to whom, and for what consideration, and when, he disposed of any part of his property except such part as had been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud. 2. If he does not deliver up to such trustee or as he directs all such part of his real and personal property as is in his custody or under his control and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud. 3. If he does not deliver up to such trustee, or as he directs, all books, documents, papers and writings, in his custody or under his control, relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud. 4. If after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he conceals or removes any part of his property to the value of fifty dollars or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud. 5. If he makes any material omission in any statement required under the principal Ordinance, relating to his affairs, unless the jury is satisfied that he had no intent to defraud. 6. If, knowing or believing that a false debt has been proved by any person under the bankruptcy proceedings, he fails for the period of a month to inform the trustee thereof, unless the jury is satisfied that he had no intent to defraud. 7. If after the presentation of a bankruptcy petition by or against him he prevents the production of any books, document, paper or writing, affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law. 8. If after the presentation of a bankruptcy petition by or against him or within six months next before such presentation he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law. 9. If after the presentation of a bankruptcy petition by or against him or within six months next before such presentation he makes, or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law. 10. If after the presentation of a bankruptcy petition by or against him or within six months next before such presentation, he parts with, alters or makes any omission in, or is privy to the parting with, altering, or making any omission in, any document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud. 11. If after the presentation of a bankruptcy petition by or against him or at any meeting of his creditors within six months next before such presentation he attempts to account for any part of his property by fictitious losses or expenses. 12. If within six months next before the presentation of a bankruptcy petition by or against him he by any false representation or other fraud obtains any property on credit, and has not paid for the same. 13. If within six months next before the presentation of a bankruptcy petition by or against him he obtains under the false pretence of carrying on business and dealing in the ordinary way of his business any property on credit, and has not paid for the same, unless the jury is satisfied that he had no intent to defraud. 14. If within six months next before the presentation of a bankruptcy petition by or against him he pawns, pledges, or disposes of otherwise than in the ordinary way of his business any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud. 15. If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to any agreement with reference to his affairs, or his bankruptcy. 16. If after the presentation of a bankruptcy petition by or against him or within a period of six months next before such presentation he quits the Colony and takes with him, or attempts or makes preparation for quitting the Colony and for taking with him, any part of his property to the amount of one hundred dollars or upwards, which would by law be divisible amongst his creditors under the bankruptcy, unless the jury is satisfied that he had no intent to defraud.

**Penalty for any false claim etc., by a creditor in bankruptcy.** 3. If any creditor in any bankruptcy or liquidation by arrangement or composition with creditors in pursuance of principal Ordinance wilfully and with intent to defraud makes any false claim or any proof, declaration, or statement of account which is untrue in



any material particular, he shall be guilty of a misdemeanour punishable with imprisonment not exceeding one year with or without hard labour.

Imp. 32 & 33 Vic. c. 62, § 11.

**Liability of debtor for unpaid balance of debt in certain cases. 4.** Where a debtor makes any arrangement or composition with his creditors under the provisions of the principal Ordinance, he shall remain liable for the unpaid balance of any debt which he incurred or increased, or whereof, before the date of the arrangement or composition, he obtained forbearance by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

**Misdemeanours. 5.** 1. Where there is in the opinion of the Court ground to believe that a bankrupt or any other person has been guilty of an offence which is by law made a misdemeanour in cases of bankruptcy the Court may commit the bankrupt or such other person for trial. 2. For the purpose of committing the bankrupt or such other person for trial the Court shall have all the powers of a justice of the peace as to taking depositions, binding over witnesses to appear, admitting the accused to bail or otherwise.

**Attorney-General to prosecute where the Court orders prosecution. 6.** Where the Court orders a prosecution of any person for any offence under this Ordinance or for any offence arising out of or connected with any bankruptcy proceedings it shall be the duty of the Attorney-General to institute and carry on the prosecution.

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# Falkland Islands.

## Introduction.<sup>1)</sup>

The Colony of the Falkland Islands embraces besides the islands properly so called the groups of islands known as South Georgia, the South Orkneys, the South Shetlands, the Sandwich Islands, and the territory known as Graham's Land, situated in the South Atlantic Ocean to the south of the fiftieth parallel of south latitude, and lying between the twentieth and eightieth degrees of west longitude<sup>2)</sup>.

## History and government.<sup>3)</sup>

The Falkland Islands were discovered in 1592 by Captain Davis, who accompanied Cavendish on his last voyage. Davis made no observations as to their position, and "left them as he found them, without a name."<sup>4)</sup> In 1594 they were seen by Sir Richard Hawkins, who named them in honor of his Queen and of himself, Hawkins's Maidenland. The Dutch navigators, Verhagen and Sebald de Wert, reached them in 1598, and named them Sebald's Islands. Their present name was probably given them in 1689 by Strong.

In 1748 ships were fitted out by the British government to obtain a more complete knowledge of the islands. This aroused the suspicion and opposition of the Spanish ambassador at London. Sir Benjamin Keene, then representing England at Madrid, was interrogated by Carvajal concerning the expedition. In conformity with his instructions he informed the Spanish government that mere discovery was intended, and no settlement contemplated. But this did not satisfy the Spanish government, and the British government finally dismissed the whole design<sup>5)</sup>.

In 1764 the Islands were taken possession of by the French, and a colony of Acadians planted at Port Louis on East Falkland. In 1765 Capt. Byron, acting for the British government, took formal possession, and early in the following year Capt. Macbride arrived in the Islands, erected a small block house and stationed a garrison at Port Egmont. These acts were done in ignorance of the existence of the settlement at Port Louis<sup>6)</sup>. The rights of the French had in the meantime been transferred to Spain. On 28th November, 1769, Capt. Hunt, in command of the English garrison, commanded a Spanish schooner hovering about the island to depart. The Spanish commander obeyed, but in a few days returned with a letter dated Malouina, 30th November, 1759, signed by the chief officer of the settlement on East Falkland, and claiming the islands as a part of Spain. Capt. Hunt in turn asserted the rights of Great Britain to the islands. In the following year a Spanish fleet of five frigates with sixteen hundred men was sent to assert Spanish sovereignty, and the English garrison surrendered. Diplomatic negotiations followed. England demanded the restitution of the Falkland Islands, and a disavowal of the acts of the Spanish officers. Spain offered a compromise providing for a mutual disavowal of Hunt's act of warning and the acts of the Spanish officers. This was refused, the British representative at Madrid was ordered to withdraw, and warlike preparations were made by England. Spain then disavowed the acts of the Spanish officers, and agreed to restore Port Egmont to Great Britain, leaving the question of the prior right of sovereignty unaffected<sup>7)</sup>. The action of the English ministry

<sup>1)</sup> The writer desires to express his thanks to the Colonial Secretary, for official texts of the Ordinances herein reprinted. — <sup>2)</sup> Ord. No. 9 of 1908, § 1. — <sup>3)</sup> In addition to the authorities cited in this section, see Lucas, *Historical geography of the British Colonies*, Vol. 2, pp. 319—329; Lacroix, *Historia de la Patagonia, Tierra de Fuego e Islas Malvinas; Annual register*, 1771, c. 1; Pernetz, *Journal historique d'une voyage faite aux îles Malouines; Alcedo y Herrera, Piraterias y agresiones . . . en América española*. — <sup>4)</sup> Johnson, *Thoughts on the late transactions respecting Falklands' Islands*, p. 5. (The references are to the edition London, 1771.) — <sup>5)</sup> Ibid. pp. 9—11. — <sup>6)</sup> Ibid. p. 12. — <sup>7)</sup> Ibid. pp. 13—24.



was the occasion of the bitter attacks on the government by Junius, and brought forth the vindication of its actions by Samuel Johnson.

The islands appear to have been abandoned by Great Britain in 1774. In 1820 the Republic of Buenos Ayres took possession of them, and in 1826 made a grant of East Falkland to Don Luis Vernet. In 1831 Vernet, acting under a decree of 10th June, 1829, as political and military governor of the islands, seized three American schooners for violating the sealing regulations of the government of Buenos Ayres. President Jackson in his annual message to Congress (6th December, 1831) referred to the incident, and denied the jurisdiction of the Buenos Ayres government<sup>1</sup>). In December, 1831, Capt. Duncan of the U. S. S. "Lexington" proceeded from Buenos Ayres to the Falkland Islands, released the captured American vessels and their crews, and dispersed the Argentine colonists<sup>2</sup>). The incident gave rise to demands for indemnity by both the American and the Buenos Ayres governments, and resulted finally in Mr. Baylies, the American chargé d'affaires at Buenos Ayres, demanding his passports.

On 3d January 1833, Great Britain took formal possession of the Islands, claiming them under the recognition of the British claims by Spain in 1770 and 1771. The government of Buenos Ayres vigorously protested, but the British sovereignty has been exercised continuously since 1833<sup>3</sup>).

Prior to the establishment of civil government in 1843, the Islands were administered by naval officers. Civil government was established by letters patent of 23d June, 1843, issued under the authority of the Act of Parliament of 11th April 1843<sup>4</sup>). Further provision for the government of the Falkland Islands was made by letters patent of 28th April, 1876, creating the office of Governor and Commander-in-Chief. The Falkland Islands Company was incorporated by Royal Charter, 23d December, 1851.

The present constitution of the Colony is contained in the letters patent of the 25th February, 1892<sup>5</sup>). The executive authority is vested in a Governor and Commander-in-Chief, assisted by an executive council<sup>6</sup>). The legislative council is composed of the Governor and of not less than two other members appointed by the Crown, and is invested with power to establish ordinances not repugnant to the law of England, and to constitute courts<sup>7</sup>). The right to disallow local Acts and to legislate by means of orders in council is expressly reserved<sup>8</sup>). The government of the Dependencies is regulated by letters patent of 21st July, 1908<sup>9</sup>).

### Law in force.

The Falkland Islands having been acquired by occupation, the law in force is the common law of England, as modified by Imperial Acts expressly or impliedly extended to the colony, and by local ordinances<sup>10</sup>). The law in force in England on 1st January, 1850, in so far as applicable to local conditions was adopted by an ordinance of 1876<sup>11</sup>).

The common law and statutes of general application which were in force in England on the 22d May, 1900, are, subject to all local ordinances and orders in council for the time being in force, declared to be in force in the Colony and dependencies, but so far only as the circumstances of the Colony and dependencies and their inhabitants and the limits of the colonial jurisdiction permit, and subject to such qualifications as local circumstances render necessary<sup>12</sup>).

<sup>1</sup>) This view was followed by the Supreme Court of the United States in *Williams v. Suffolk Insurance Co.*, (1839), 13 Pet. 415. — <sup>2</sup>) The United States Circuit Court for Connecticut held that a claim for salvage of property thus retaken should not be allowed, the retaking having been unlawful. — *Davison v. Sealskins*, (1835), 2 Paine 324, Fed. Cases No. 3661. But cp. *Williams v. Suffolk Insurance Co.*, (1839), 13 Pet. 415; Letter from Mr. Bayard, Secretary of State to Mr. Quesada, 18th March, 1886, 1 *Moore Digest of International Law*, 171. — <sup>3</sup>) See *British and Foreign State Papers*, Vols. 20 and 22; *Reclamacion del Gobierno de las Provincias Unidas de la Plata contra el de S. M. Britanica sobre la soberania y posesion de las Islas Malvinas; Observations on the forcible occupation of Malvinas by the British Government in 1833*; 1 *Moore Digest of International Law*, § 171. — <sup>4</sup>) 6 & 7 Vic. c. 13. — <sup>5</sup>) Stat. R. & O. Rev. 1904, Vol. 4, "Falkland Islands," p. 1. — <sup>6</sup>) *Ibid.* §§ 2, 5. — <sup>7</sup>) *Ibid.* §§ 6, 7. <sup>8</sup>) *Ibid.* § 8. — <sup>9</sup>) Stat. R. & O. 1908, p. 1042. — <sup>10</sup>) *Falkland Islands Company v. The Queen*, (1864), 2 Moo. P. C. (N. S.) 266. — <sup>11</sup>) Ord. No. 2 of 1876. — <sup>12</sup>) Ord. No. 8 of 1908 § 2, and Ord. No. 9 of 1908, § 2.

### Courts and procedure.

The Supreme Court consists of the Chief Justice, and, if assessors are summoned, of the Chief Justice and such assessors, and of such other Judge or Judges as may be appointed<sup>1)</sup>. The same person may be appointed to the offices of Chief Justice and Police Magistrate, and any person so appointed ceases to be styled the Chief Justice, and is styled the Judge<sup>2)</sup>. Whenever the same person holds the office of Judge and Police Magistrate the Supreme Court for the purpose of hearing appeals from the police court, but for no other purpose, is held before the Judge and three Justices, and on such appeals all questions are determined by a majority of the Court, the Judge having a casting vote in the case of an equality of votes<sup>3)</sup>.

The Supreme Court has within the Colony all the jurisdiction, powers and authority of the following Courts and Judges in England: 1. The King's Bench Division of the High Court of Justice; 2. The Chancery Division of the High Court of Justice; 3. The Courts and Justices of Oyer and Terminer and general gaol delivery; 4. Any Court of Quarter Sessions in England; 5. The Probate, Divorce and Admiralty Division of the High Court of Justice in matters of probate and admiralty, and in matters of divorce subject to Her Majesty's Order in Council of 28th November, 1899, and to any Order in Council that may be made altering or amending such jurisdiction<sup>4)</sup>. The Supreme Court also exercises jurisdiction in matters of insolvency and bankruptcy<sup>5)</sup>, escheat<sup>6)</sup>, and the guardianship of infants and lunatics<sup>7)</sup>. Law and equity are administered concurrently; where there is a conflict between the rules of equity and the rules of common law, the former prevail<sup>8)</sup>.

The Chief Justice may cause any member of council or justice to be summoned to sit with him as an assessor in the trial of any cause or the hearing of any proceeding, civil or criminal. Such assessors have no voice in the decision of any case, but the name of every assessor who dissents from the judgment of the Court, together with a note of the grounds of such dissent, is recorded on the proceedings and signed by the assessor so dissenting<sup>9)</sup>. The Chief Justice may by summary order remove into the Supreme Court any suit instituted in a lower court, and may also remove from the Supreme Court into a lower court any suit involving directly or indirectly any claim, demand, or question to, or respecting property, or any civil right amounting to or of the value of not more than £50, and which, in his opinion, can properly be tried in such lower courts, and thereupon the Police Magistrate or Judge of the summary court, as the case may be, may summarily try the same<sup>10)</sup>.

The Supreme Court has appellate jurisdiction over all cases determined in the inferior courts, and in respect of any misdirections or misrulings of the judges thereof, and may set aside or correct the same<sup>11)</sup>. Any person dissatisfied with any judgment of any inferior court may appeal to the Supreme Court by petition within fourteen days after the day on which judgment was given, or within such further time as the Chief Justice may allow. The Supreme Court may determine the case upon the evidence taken in the Police Court, or may rehear the case and admit new evidence, and determine the case in a summary way, or remit it to be tried by a jury, and allow such costs to either party as it deems just<sup>12)</sup>. No right of appeal exists in the following cases: 1. Where the truth of the accusation or correctness of the claim has been admitted; 2. Where imprisonment is adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into any recognizance, or for the giving of any security; 3. Where in a civil case before judgment both parties agree in writing that the judgment of the inferior court shall be final; and 4. Where the accused has consented to an adjudication of his case by the inferior court<sup>13)</sup>.

Stipendiary Magistrates and Justices may be appointed by the Governor<sup>14)</sup>. A Magistrate may summon two Justices to sit with him as assessors on the trial of any civil or criminal case<sup>15)</sup>. In addition to criminal jurisdiction, a Magistrate sitting alone has jurisdiction in all suits where the claim, debt or damage or balance

1) Ord. No. 4 of 1901, § 2. — 2) Ibid. § 4. — 3) Ibid. § 5. — 4) Ord. No. 4 of 1901, § 9. — 5) Ibid. § 10. — 6) Ibid. § 13. — 7) Ibid. § 14. — 8) Ibid. § 15. — 9) Ibid. §§ 16, 17. — 10) Ibid. § 22. — 11) Ord. No. 4 of 1901, § 11. — 12) Ibid. § 26. — 13) Ibid. § 27. — 14) Ord. No. 5 of 1902, § 3. — 15) Ibid. § 7. The provisions relating to assessors summoned in the Supreme Court apply to assessors summoned by a Magistrate under this section.



sought to be recovered does not exceed the sum of £50, and in all suits for the recovery of the possession of a tenement where the annual rent or value thereof does not exceed the said amount<sup>1</sup>). An appeal lies to the Supreme Court, subject to the provisions above set forth.

An appeal lies to the Privy Council from any final judgment of the Supreme Court in respect of any matter above the value of £500, and at the discretion of the Court from any other judgment, final or interlocutory. Notice of appeal must be given within twenty-one days next after the judgment, and security for the prosecution of the appeal and the payment of costs must be furnished within three months. The judgment appealed from may be carried into execution or be suspended pending the appeal, as the Chief Justice may direct, and upon such terms and subject to such security to be given by either party as may appear to be most consistent with real and substantial justice<sup>2</sup>).

Except as otherwise provided by local Ordinance or Order in Council, the procedure of the High Court of Justice in England is adopted in the Supreme Court, and the procedure in Police Magistrates' Courts in England is adopted in the Magistrate's Court<sup>3</sup>).

## Bibliography.

### Collections of Ordinances.

**Laws** and ordinances of the Falkland Islands. London. 1858.

**Laws** and ordinances of the Falkland Islands from the settlement of the Colony to the year 1884. n. p. (1885).

**Sessional** ordinances. Annual. Stanley.

## Statutes.<sup>4</sup>)

### Application of Law.

**a) No. 3 of 1900. An Ordinance relating to the Promulgation and Construction of Ordinances; the Law in force in the Falkland Islands, and certain general Rules of Law and Procedure (22d May, 1900).**

**Law of England in force.** 31. [As amended by Ord. No. 6 of 1908.] Subject to all local Ordinances and Orders in Council for the time being in force, the common law, the doctrines of equity, and the statutes of general application which were in force in England on the 22d day of May, 1900, are and shall be in force in this Colony, but so far only as the circumstances of the Colony and its inhabitants and the limits of the colonial jurisdiction permit, and subject to such qualifications as local circumstances render necessary.

By virtue of this section, and subject to the limitations therein set forth, *semble*, the following Acts of the Imperial Parliament are in force in the Colony:

Partnership — 53 & 54 Vic. c. 39,

Sale of Goods — 56 & 57 Vic. c. 71<sup>5</sup>),

<sup>1</sup>) Ord. No. 5 of 1902, § 5 (3). — <sup>2</sup>) Ord. No. 5 of 1901. As to appeals to the Privy Council in criminal cases, see *Falkland Islands Co. v. The Queen*, (1863), 1 Moo. P. C. (N. S.) 299. — <sup>3</sup>) Ord. No. 3 of 1900, § 32. — <sup>4</sup>) As in force 15th March, 1912. — <sup>5</sup>) On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied or that the trade description is not a false trade description within the meaning of that Ordinance unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee. Where at the passing of this Ordinance a trade description is lawfully and generally applied to goods of a particular class or manufactured by a particular method to indicate the particular class or method of manufacture of such goods, the provisions

Factors — 52 & 53 Vic. c. 45,  
 Bills of Lading — 18 & 19 Vic. c. 111,  
 Bills of Exchange — 45 & 46 Vic. c. 61,  
 Bankruptcy — 46 & 47 Vic. c. 52,  
                                   53 & 54 Vic. c. 71.

The law relating to companies and public holidays is contained in the Ordinance and Notice set forth *infra*. Ord. No. 7 of 1891, extending to the Colony the Imperial Bills of Exchange Act, 1882 (45 & 46 Vic. c. 61), was repealed by Ord. No. 3 of 1900. The provisions of the Bills of Exchange Act are in force by virtue of the above section. The Bankruptcy Ordinance, 1871 (No. 1 of 1871) was repealed by Ord. No. 4 of 1901. As to the application of English law in the Dependencies of the Falkland Islands see Ord. No. 9, of 1908, § 2 *infra*.

**Procedure. 32.** Unless otherwise provided by local Ordinance or Order in Council, the procedure of the High Court of Justice in England shall as far as possible be adopted in the Supreme Court; the procedure in a Police Magistrate's Court in England shall as far as possible be adopted in a Magistrate's Court; and the procedure in a County Court in England shall as far as possible be adopted in any Court for the recovery of small debts.

**Short title. 34.** This Ordinance may for all purposes be cited as *The Interpretation and General Law Ordinance, 1900*.

The short title of this Ordinance as amended by the Ordinances of 1906 and 1908 is *The Interpretation and General Law Ordinances, 1900 to 1908*.

## **b) No. 9 of 1908. An Ordinance to regulate the Legal Position of the Dependencies of the Colony of the Falkland Islands (24th December, 1908).**

**Law of England in force. 2.** Subject to all local Ordinances and Orders in Council for the time being in force, the common law, the doctrines of equity, and the statutes of general application which were in force in England on the 22d day of May, 1900, are and shall be in force in the Dependencies, but so far only as the circumstances of the Dependencies and their inhabitants and the limits of the colonial jurisdiction permit and subject to such qualifications as local circumstances render necessary.

See note to Ord. No. 3 of 1900, § 31 *supra*.

**Short title. 12.** This Ordinance may be cited as *The Dependencies Ordinance, 1908*.

## **Companies.**

### **No. 8 of 1898. An Ordinance relating to Trading Companies and other Associations (16th July, 1898).**

**Companies Acts in force. 1.** Subject to the provisions of this Ordinance all laws, rules, and regulations for the time being in force relating to trading companies and other associations in the United Kingdom, shall, so far as the same are applicable, be in force in this Colony, and the Governor may from time to time by order, provide for all matters relating to the practice, procedure, jurisdiction, and fees in this Colony, under the said laws, rules and regulations in cases where the provisions thereof in respect of such matters are deemed by him inapplicable to this Colony.

**Registrar. 2.** The Registrar-General shall be the Registrar of Joint Stock Companies, and the memorandum of association and the articles of association,

of this Ordinance with respect to false trade description shall not apply to such trade description when so applied. Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods are actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply, unless there is added to the trade description immediately before or after the name of that place or country in an equally conspicuous manner with that name the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there. — Ord. No. 1 of 1889, 15 & 16. Sales by auctioneers and the licensing of auctioneers is regulated by Ord. No. 5 of 1853.



if any, of any trading company formed in this Colony under the provisions of this Ordinance shall be registered in the current general deed book.

**Qualification of director. 3.** The value of the shares which a director must hold shall, unless otherwise prescribed in the regulations of the company, be of the nominal value of not less than ten pounds.

**Ministers may be directors. 4.** No minister of religion shall, by virtue of his office, be disqualified from being a director of a company registered under this Ordinance.

**Assembly room company deemed to be registered. 5.** The "Stanley Assembly Room Company, Limited," shall be deemed to be a company with limited liabilities, duly registered under the provisions of this Ordinance, and the provisions of the *Stanley Assembly Room Ordinance, 1888*, shall be deemed to be the memorandum of association and regulations of the said company, and shall remain in force until altered or revoked as hereinafter provided.

**Revoking and altering constitution rules. 6.** The "Stanley Assembly Room Company, Limited," may alter or revoke their memorandum of association and their regulations by special resolution at a general meeting as provided for in the Companies Acts.

**Special resolution. 7.** A copy of any special resolution that is passed by any company under this Ordinance shall be forwarded to the Registrar General, but no such special resolution shall be registered until it has been confirmed by the Chief Justice, and every special resolution shall, when registered, be printed, and a copy thereof transmitted to every shareholder of the company.

**Repeal. 8.** Ordinance No. 7 of 1888 entitled *The Stanley Assembly Room Ordinance, 1888*, shall be, and the same is hereby repealed.

**Short title. 9.** This Ordinance may be cited as *The Companies Ordinance, 1898*.

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## Public Holidays.

### Notice No. 49 of 1903. Public Holidays.<sup>1)</sup>

His Excellency the Governor has been pleased to notify that the following days will be kept as public holidays in the Falklands: 1. The Birth of the Sovereign; 2. Christmas Day; 3. Day after Christmas; 4. New Year's Day; 5. Good Friday; 6. Victoria Day, the 24th May.

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<sup>1)</sup> Falkland Islands Gazette, July 1st, 1903.

# British Guiana.<sup>1)</sup>

## Introduction.

### History and government.

The Colony of British Guiana was acquired by conquest from the Batavian Republic in 1803. At the date of the conquest the Colony was divided into the three Dutch Settlements of Demerara and Essequibo, under one governor, and Berbice, under another governor. It appears from the despatches received by the British Admiralty on the 29th November, 1803, which are published in the "London Gazette" of the same date that by the Articles of Capitulation of the settlements of Demerara and Essequibo dated 18th September, 1803, the laws and usages of the Colony were to remain in force and be respected; and the Colony of Berbice was by the Articles of Capitulation of the 24th September, 1803, surrendered on the same terms. In 1831 by Royal Letters Patent the united Colony of Demerara and Essequibo and the Colony of Berbice were made into the single Colony of British Guiana. The laws and usages referred to in the Articles of Capitulation are based on the Roman-Dutch law as it prevailed in Holland previous to the introduction of the Code into that country. This Roman-Dutch law has been expounded by, amongst other jurists, Simon Van Leeuwen in his "Commentaries on Roman-Dutch Law," which was published in 1664.

### Law in force.

**The Common Law of the Colony is the Roman-Dutch law.** The statutory law of the Colony consists of the Ordinances enacted by the Governor of British Guiana with the advice and consent of the Court of Policy, Orders in Council, Acts of the Imperial Parliament extended to the Colony, and Rules and Regulations for administrative purposes made under and by authority of Ordinances. A new and revised edition of the Statute Laws of the colony was prepared and printed pursuant to the Statute Laws (revised edition) Ordinance, 1904. It is based on the revised edition prepared in 1894 by Sir John Carrington, then Attorney-General of the colony, under the authority of an Ordinance similar to that under which the existing revised edition has been prepared. From the works of Simon Van Leeuwen and other commentators on Roman-Dutch law and this revised edition must be deduced the mercantile and maritime law of the Colony.

**Commercial Law. Contract and Agency.** The common law of the Colony is the Roman-Dutch law: the Institutes of the Laws of Holland by Johannes Van Der Linden LL.D., Amsterdam 1806, should be consulted on the law of contract and agency.

**Partnership.** The Partnership Ordinance, 1900 (No. 20, of 1900) extends to the Colony the Partnership (Imperial) Act, 1890 (53 & 54 Vic. c. 39), with such verbal variations as are requisite to substitute the jurisdiction of the Supreme Court of British Guiana for that of the Supreme Court of Judicature of England. There are also supplemental sections whereby subject to the provisions of the Ordinance and of any other statute for the time being in force the rules of equity and common law applied by the Chancery Division of the High Court of Justice in England in cases relating to partnership are to be in force and apply to cases in the Colony. The Ordinance is, subject to the provisions of any written partnership agreement, to apply to all partnerships formed after its commencement, and if the members of any partnership formed before its commencement signify by any written document recorded in the Registrar's (colonial) office their desire that it should so apply, it is also to apply to such partnership as if such partnership had been formed after its commencement. The Ordinance is dated 13th June, 1900.

<sup>1)</sup> The Introduction was contributed by Mr. Shephard, the statutes and notes thereto by Mr. Huberich.



**Mining Partnerships.** The Mining Ordinance, 1903, (No. 1 of 1903) in Part 5 as to Mining Partnerships, sections 37 to 46 inclusive, enacts that a mining partnership exists when two or more persons own or acquire a claim for the purpose of working it, and actually engage in working it or jointly employ others to work it for them; and whether there is a written contract of partnership or not.

An express agreement to become partners or to share the profits or losses of mining is not necessary to the formation or existence of a mining partnership. The relation arises out of the ownership of shares in a claim and working the same for the purpose for which the concession was granted or the licence in respect of it issued.

Any claim owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

The assessment of the shares of mining partners in profits and losses, their lien on partnership property for debts due to creditors or themselves for advances, modes of transfer of their shares, and right of dissolution, are provided for by these sections of Part 5 of the Ordinance.

Part 5 does not apply to any company or association incorporated or registered under the Companies Ordinance, 1898, and its application may be limited or excluded by a written contract of partnership. The Partnership Ordinance, 1900, does not apply to any question provided for by Part 5 of the Ordinance where the Ordinance applies to the partnership in connection with which such question had arisen.

**Limited Partnership.** No Ordinance has up to the end of the year 1911 enabled the formation of limited partnerships.

**Company Law.** The constitution and powers of joint stock companies for carrying on undertakings of a public nature and their authority to take lands for such purpose are provided for by the following Ordinances.

The Companies' Clauses and Powers Consolidation Ordinance No. 1, 1846. This Ordinance comprises such of the provisions of the following Imperial Acts as are applicable to the circumstances, state, and condition of the Colony, viz:

An Act to provide for the Conveyance of the Mails by Railway (1 & 2 Vic. c. 98).

An Act for regulating Railways (3 & 4 Vic. c. 97).

An Act for the better Regulation of Railways, etc. (5 & 6 Vic. c. 55).

An Act to attach certain Conditions to the Construction of Railways, etc. (7 & 8 Vic. c. 85).

An Act for consolidating in one Act certain provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a Public Nature (8 & 9 Vic. c. 16).

An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the Taking of Lands for Undertakings of a Public Nature (8 & 9 Vic. c. 18).

An Act for consolidating in one Act certain Provisions usually inserted in Acts authorising the Making of Railways (8 & 9 Vic. c. 20).

An Act to restrict the Powers of selling or leasing Railways, &c. (8 & 9 Vic. c. 96).

The Companies' Clauses and Powers Consolidation Ordinance, No. 4 of 1877, consolidates in one Ordinance certain provisions usually inserted in Ordinances relating to the constitution and management of companies incorporated for carrying on undertakings of a public nature. This Ordinance, so far as the same may be applicable, applies to every company which obtains a special Ordinance incorporating this Ordinance save so far as its provisions are expressly varied or excepted by the special Ordinance. It is divided into 26 parts dealing with matters relating to Shares, Stock, General Meetings, Directors, Auditors, Accounts, Dividends, By-Laws, etc.

The Companies' Clauses (Completion of Titles) Ordinance, 1898, amends the Ordinance No. 1 of 1846 in respect of the completion of the title to lands required by undertakings of a public nature.

The English Companies (Holding of Lands) Ordinance, No. 7 of 1868, enables companies incorporated under the Imperial Companies Acts to hold lands and other immoveable property in the Colony in the same manner to all intents and purposes as if such company had been incorporated in the Colony under the Colonial Ordinance. This Ordinance is extended by Ordinance No. 12 of 1910.

The Companies Ordinance, No. 21 of 1898, consolidates and amends the law relating to the incorporation, regulation, and winding-up of trading companies and other associations.

**Commercial Contracts.** The Sale of Goods (Imperial) Act of 1893 and the Factors (Imperial) Act of 1889 have not been extended to the Colony. The law as to sales of goods and factors or mercantile agents follows the Roman-Dutch law of the Colony and English common law, both English and South African judgments being cited in the Supreme Court of the Colony.

**Banking and Bills of Exchange.** Copies of entries in bankers' books are by the Evidence Ordinance, No. 20 of 1893, made admissible as *prima facie* evidence of such entry after proof either oral or by affidavit that the book containing the entry was at the time of the entry one of the ordinary books of the bank and that the entry was made in the usual and ordinary course of business and that the book is in the custody of the bank.

**Bills of Exchange.** The Bills of Exchange Ordinance, No. 13 of 1891, extends to the Colony the Bills of Exchange (Imperial) Act of 1882. It was amended by Ordinance No. 17 of 1907.

**Maritime Law.** By Ordinance No. 6 of 1864 the general law is declared and it is provided that all questions relating to ships and property therein and owners thereof and the behaviour of masters and mariners and their respective rights, etc.; stoppage in transitu; freight; demurrage; insurance; salvage; average; collisions; bills of lading and all rights, liabilities, claims, contracts; and matters arising in respect of any ship or any such question as aforesaid are to be determined according to the law of England.

**Bankruptcy.** The Insolvency Ordinance, No. 29 of 1900, consolidates and amends the laws relating to insolvency.

### Courts and procedure.

**Constitution of the Supreme Court.** The Supreme Court of Civil Justice of British Guiana and the Supreme Court of Criminal Justice of British Guiana were united, consolidated together, and constituted one Supreme Court of Justice in the Colony to be called the Supreme Court of British Guiana. The Court is a Superior Court of Record and exercises all the authorities, powers, and functions belonging to such a Court according to the law of England, and all the authorities, powers and functions which at the date of the conquest of the Colony belonged to the High Court of Justice of Holland and to the National Court of Holland or other Courts then possessing and exercising in Holland or in the Colony the jurisdiction of Superior Courts.

The Court consists of three judges; viz, the Chief Justice of British Guiana, and two Puisne Judges of British Guiana.

The Court uses a seal bearing the Royal Arms and the inscription "The Supreme Court of British Guiana," and every document, including letters of decree, required by law or the practice of the Court to be sealed must be sealed with such seal. The judges of the Court are appointed by the Governor and hold office during the King's pleasure, or until avoided by the judges' acceptance of some other office not authorized by law.

The Full Court is ordinarily composed of the three judges: but any two judges are sufficient to constitute a Court, except for the determination of appeals from the decision of a judge. In case of difference in a Full Court of two judges then the cause or matter must be re-tried, or re-heard and determined by a Full Court of three judges.

A single Judge, sitting apart or in chambers, continues to exercise the jurisdiction exercised by a single Judge before the passing of the Ordinance. The criminal jurisdiction is exercised by a single Judge sitting with a jury in the same manner and with the same power as a Judge of Assize in England. The limited, appellate and admiralty jurisdiction vested in the Court is exercised by a single Judge sitting apart or in chambers.

The officers of the Court have their duties and powers prescribed by the Ordinance.

**Original Jurisdiction.** The Court, both civil and criminal, includes within its jurisdiction all the jurisdictions then vested in the Courts which by the Ordinance were united, or in all or any one or more of the Judges of the said Courts sitting together or separately.



The Court has a limited jurisdiction: 1. In actions of debt or damages on any claim not exceeding 2500 dollars; 2. In actions for the recovery or transport of immoveable property, specific chattels, or penalties where the value or amount is under 2500 dollars; 3. In all mortgage actions where claim is under 2500 dollars; 4. In all opposition suits on claims under 2500 dollars; 5. In actions of interdict, mandament, mandamus, or appointment of a receiver, where the subject matter is under 2500 dollars; 6. In actions of partition or sale where the value of the property is under 5000 dollars; 7. In actions for an account, or administration of any estate or boedel under 5000 dollars in amount or value; 8. In actions for dissolution of partnership where the property is under 5000 dollars in value; 9. In actions against an agent for an account on claims under 2500 dollars; 10. In counter-claims in the foregoing actions to the same amount as the action; 11. In action on debts or claims recoverable by summary process; 12. And in each of the foregoing cases by consent in writing of the parties the Court has its jurisdiction unrestricted by the amount (whatever it may be) of the claim or value of the subject matter: but judgments in actions extended by such consent are not, in respect of appeal, to be deemed judgments with consent.

**Appellate Jurisdiction.** The Court exercises an appellate jurisdiction on appeals from decisions of the magistrates.

The Court is constituted a Colonial Court of Admiralty within the meaning of the Colonial Court of Admiralty (Imperial) Act 1890 and exercises Admiralty jurisdiction as provided by that Act. Jurisdiction is given to the Court to reduce what it may deem to be an excessive rate of interest in agreements to pay interest; to grant whatever remedies or relief it may think just in all causes or matters so that all questions between the parties shall be finally determined; to grant an interdict, mandament, or mandamus and appoint a receiver in cases in which it appears to the Court just or convenient: to make an order as to the procedure to be followed in any cause or matter, whether applied for by the party entitled or not.

**Appeals.** An appeal from the judgment or final order of a single Judge (not pronounced or made with the consent of the parties) must be made to the Full Court in all causes or matters not being criminal proceedings by the Crown: appeals from the Full Court are to His Majesty in Council subject to such conditions as may be in existence under Order in Council.

The Ordinance and the Rules of Court contained in it regulate the times and places of the sittings of the Court, and the practice and procedure of the Court in its general civil jurisdiction; its criminal jurisdiction; its limited jurisdiction; its appellate jurisdiction; and its admiralty jurisdiction so far as may be in accordance with the Rules for Vice-Admiralty Courts in British possessions approved by Order in Council of the 22d August, 1883.

**Transfer of Actions.** Power is given to the Court of its own motion to transfer actions from its limited to its general jurisdiction and vice versâ.

**Costs.** The fees and costs are regulated by the Rules of the Court.

**Rules of Court.** The judges may make rules and orders of Court as to: sittings and vacations; pleadings, practice, and procedure, and execution of process; costs and taxation, forms to be used; and generally as to any other matters to be regulated by the Court. All rules and orders must be approved by the Governor and Court of Policy and may be disallowed by the Crown.

**Interpretation.** Statutes relating to the several Courts whose jurisdiction is vested in the Supreme Court are to be interpreted as if the Supreme Court and the judges thereof had been named therein.

In any rules and orders of Court the words "Plantation in Cultivation" are to mean any quantity of land not less than 150 acres in cultivation with sugar-cane.

**Power ad lites.** The general power ad lites to any barrister at law or solicitor to prosecute and defend is not a power to receive money or give receipts without a special clause to that effect.

**Power to Make Rules.** The power to make rules extends to fees and costs and the practice and procedure in any department of the Registrar's office, including the Provost Marshall's office, so far as such practice and procedure is not prescribed by Ordinance.

**Restrictions on Officers of the Court.** No official in the Registrar's office may either directly or indirectly purchase any property sold in execution under pain of instant dismissal for so doing.

**Foreigners.** Subject to any special disability to sue or be sued any person, whether a foreigner or not and whether domiciled in the Colony or not, may take proceedings and be proceeded against in the Supreme Court in its civil jurisdiction, and the Court has full jurisdiction, power, and authority to try, hear and determine the action and pronounce a final judgment or order and execution therein.

**Personal Arrest.** Power is given to the Court to arrest in certain cases any defendant about to quit the Colony.

**Legal (Civil) Procedure.** The Legal Procedure is based on the following Enactments, viz: Order in Council relating to Appeals to the King in Council of the 20th June 1831; Imperial Act (3 & 4 William IV, Cap. 41), establishing the Judicial Committee of the Privy Council to hear Appeals from the Colonies, and the Acts amending the same; and the following Ordinances, viz: An Ordinance to explain and regulate the Duties, Powers, and Authority of the Chief Justice of British Guiana in certain Civil Matters (No. 2, 1847); An Ordinance for the Constitution of a Supreme Court of Justice for the Colony, &c. (No. 7; 1893); An Ordinance to amend the Law relating to the practice and procedure of the Supreme Court of British Guiana in its Civil Jurisdiction (No. 17 of 1901).

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**Rayner, Sir Thomas Crossley:** Laws of British Guiana. 1774—1905. London. 1905.

**Ordinances.** Annual. Georgetown.

### Reports of Cases.<sup>1)</sup>

Name of report	No. of volumes	Period	Method of citation
Alves, Dampier and Maxwell's Court of Review Cases	2	1856—1873	Rev. Cas.
Law Reports (Old Series)	2	1856—1865	L.R. (O.S.)
Court of Review Judgments	3	1882, 1886, 1887, 1892	Rev. Judg.
Law Reports (New Series)	3	1891—1893	L.R. (N.S.)
Supreme Court Judgments		1893—1898	S.C.
Supreme Court Judgments <sup>2)</sup>		1900—1911	By date
Official Gazette <sup>3)</sup>			

### Digests.

**Abraham, E. A. V.:** Digest of cases decided in the Review Court of British Guiana. 1856—1891. Demerara. 1892.

**Belmonte, B. E. J. C.:** Alphabetical digest. 1856—1906. London. 1906.

**Same:** Supplementary alphabetical digest. 1907—1908. London. 1908.

**Sharples, O. E.:** Digest of cases decided in the Supreme Court of British Guiana. 1901—1909. n.p. 1906—1911.

<sup>1)</sup> The preservation in the records of written reasons of judgments began to be the practice in 1856. Many cases are reported only in the local newspapers. Here should also be mentioned the report of a case involving foreign bankruptcy: Henry, Judgment of the Court of Demerara in the case of Odwin v. Forbes, London, 1823. — <sup>2)</sup> Each judgment is separately printed, on one side of the paper only, without pagination. This series covers the judgments of the Supreme Court in all its jurisdictions. — <sup>3)</sup> Previously to 1900 only judgments on appeal from the Magistrates Courts were published. Since then all the judgments of the Supreme Court are published.



## Statutes.<sup>1)</sup>

### Application of Law.

**No. 6 of 1864.** An Ordinance to introduce into this Colony the Law of England with regard to Merchant Shipping and Matters connected therewith (2d January, 1865).

**Short title.** 1. This Ordinance may be cited as the *Law of Merchant Shipping Ordinance, 1864*.

**Interpretation of term.** 2. In the construction and for the purposes of this Ordinance, the term "ships" used therein includes every description of vessel used in navigation.

**Questions relating to merchant shipping to be determined according to the law of England.** 3. From and after the commencement of this Ordinance, all questions arising within this Colony relating to the following matters, namely: ships, and the property therein, and the owners thereof, and the behaviour of the master and mariners and their respective rights, duties, and liabilities as regards the carriage of passengers and goods by ships; stoppage in transitu; freight; demurrage; insurance; salvage; average; collision between ships; bills of lading; and all rights, liabilities, claims, contracts, and matters arising in respect of any ship, or any such question as aforesaid, shall be adjudged, determined, construed, and enforced according to the law of England applicable to such or the like case.

Where a consignee indorses a bill of lading the holder alone or person authorized by the holder, is entitled to delivery. — *Rose and Duff v. Carter*, (11th June, 1858), 2 L. R. (O.S.) 88, Held, on the facts, an unreasonable delay in forwarding. — *Gomes v. Yong*, (19th December, 1902); affirmed (17th March, 1903). Where a bill of lading provides "on deck at shipper's risk" the carrier is exempt from all responsibility, including that of loss or damage from negligent or improper acts of the master or crew. — More especially the carrier is not responsible for goods lost by being washed overboard. — *S.S. "Cavalier" v. Santos & Co.*, (23d February, 1905).

**Exercise of jurisdiction in specified matters.** 4. All such questions and matters as aforesaid which, according to the law of England, are cognizable and determined by or before any of His Majesty's Superior Courts of Justice, or by or before any County Court shall be cognizable and determined in this Colony by or before the Supreme Court of British Guiana in its civil jurisdiction, according to the course and practice thereof; and all such questions which, according to the law of England, are cognizable before Justices of the Peace shall in like manner be cognizable and determined by or before the Stipendiary Magistrates of this Colony, according to the course and practice of such Magistrates, and so that such matters as, according to the law of England, are cognizable or determined by or before two Justices of the Peace may be cognizable and determined in this Colony by any Stipendiary Magistrate.

By Ord. No. 3 of 1909 the English law relating to fire and life insurance is adopted.

**Saving of admiralty jurisdiction.** 5. Nothing in this Ordinance shall in any way affect His Majesty's Vice-Admiralty Court of British Guiana or the jurisdiction or practice thereof.

### Partnership.

**No. 20 of 1900.** An Ordinance to declare and amend the Law of Partnership (13th June, 1900).

(This Ordinance is identical in all material respects with the Imperial *Partnership Act, 1890*, [53 & 54 Vic. c. 39].)

The burden of proof of showing the existence of a partnership is on the party averring. — *Tengely v. Hughes*, (March, 1890) 1 L.R. (N.S.) 34. Facts indicating the existence of a partnership at will. — *Cleghorn v. Brown*, (7th February, 1893), 3 L.R. (N. S.) 12; *Teixeira v. Harding*

<sup>1)</sup> As in force, 1st April, 1912.

& Pinder, (5th May, 1906). Where several persons are sued as partners, and no partnership in fact ever existed, judgment may be given against one. — *Brown v. Henry*, (7th December, 1903). *Quære*, whether the mere registration of a partnership agreement without particular intimation such as would notify the commercial world that the particular partnership is one en commandite is sufficient to confer that exceptional status on the firm. *Quære*, whether the restriction of liability is not confined to contractual obligations and not extended to those arising in tort. — *Administrator-General v. Farnum & Co.*, (14th July, 1891), 2 L. R. (N.S.) 73. Third persons are not bound by stipulations in the partnership agreement restricting the powers of partners to bind the firm. — *De Jonge v. Gonsalves*, (5th December, 1859), 2 L. R. (O.S.) 28. Where it is agreed between the parties that their rights shall be interpreted according to the law of British Guiana, and the foreign partners appear voluntarily, the Court will order an account in a partnership created in a foreign country to carry on operations in the Colony. — *Leggatt v. Fogel*, (6th January, 1903). Save under exceptional circumstances, the Court will not entertain an action for the taking of partnership accounts, unless a dissolution is sought. — *Leggatt v. Fogel*, (6th January, 1903). The dissolution of a partnership may be inferred from circumstances. Where by consent of the partners the business is transferred to another person, there is in effect a termination of the partnership. Thereafter the old partnership continues merely for the purpose of winding up pending affairs. — *Tat v. Man Son Hing*, (24th April, 1909). A partner cannot be a debtor, in the legal sense of the word, of the firm of which he is himself a member. — *Gomes v. Willems*, (1st October, 1903). A surviving partner can sue for a debt due to a firm, the remedy surviving. *Perot v. Executors of Smith*, (17th August, 1903). Circumstances under which a partner was held barred by acquiescence from opening up accounts. — *De Freitas v. Peireira*, (16th March, 1893), 3 L. R. (N. S.) 32. Upon dissolution, each partner is entitled in the absence of agreement, to have the partnership property sold. — *Leggatt v. Fogel*, (6th January, 1903). A claim for dissolution refused. — *Seabra v. Wilson*, (2d December, 1903). A partnership dissolved. — *Taite v. Nedd*, (3d January, 1903).

### Companies.<sup>1)</sup>

**a) No. 21 of 1898. An Ordinance to consolidate and amend the Law relating to the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations. (10th December, 1898.)<sup>2)</sup>**

#### *Preliminary.*

**Short title.** 1. This Ordinance may be cited as the *Companies Ordinance, 1898*. Imp. § 295.

**Definitions.** 2. For the purposes of this Ordinance: 1. A company which carries on the business of insurance in common with any other business or businesses, shall be deemed to be an insurance company. 2. "The Court" means the Supreme Court of British Guiana, and includes any Judge thereof sitting apart in any proceedings under Part IV or which may under this Ordinance or any Rules of Court be taken or had before a single Judge. 3. "The Registrar" means the Registrar of Joint Stock Companies hereinafter mentioned.

**Arrangement of the Ordinance.** 3. This Ordinance is divided into Parts as follows: Part. I. Constitution and Incorporation of Companies and Associations. Part. II. Registers, Capital, Liability of Members, etc. Part. III. Management and Administration of Companies and Associations. Part. IV. Winding-up of Companies and Associations, and striking defunct Companies off the Register. Part. V. The Registration Office. Part. VI. Application of Ordinance to Companies registered under the Companies Ordinance, 1864. Part. VII. Companies authorized to register, and Re-registration. Part. VIII. Application of the Ordinance to unregistered Companies. Part. IX. Repeals and special Provisions.

**Prohibition of partnerships exceeding certain number.** 4. 1. No company, association, or partnership shall be formed, after the commencement of this Ordinance, for the purpose of carrying on the business of banking, unless it is formed in pursuance of some special or other Ordinance, or of an Order-in-Council, or of an Act

<sup>1)</sup> For the law relating to companies carrying on undertakings of a public nature, see Ords. No. 1 of 1846, No. 4 of 1877, and No. 9 of 1898. A number of companies operate under Royal Charters or special Ordinances, e.g., British Guiana Bank, British Guiana Building Society, Limited, British Guiana Mutual Fire Insurance Co., Ltd., Colonial Bank, Demerara Electric Co., Demerara Mutual Life Assurance Society, Ltd., Demerara Railway Co., Hand-in-Hand Mutual Guarantee Fire Insurance Company of British Guiana, Ltd. — <sup>2)</sup> The references (Imp.) in the notes are to the Imperial Companies (Consolidation) Act, 1908, (8 Edw. 7, c. 69).



of Parliament, or of Letters Patent from the Crown. 2. No company, association, or partnership consisting of more than twenty persons shall be formed, after the commencement of this Ordinance, for the purpose of carrying on any business, other than banking, that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Ordinance, or is formed in pursuance of some other Ordinance, in or of an Order-in-Council, or of an Act of Parliament, or of Letters Patent from the Crown.

Imp. § 1.

## *Part I. Constitution and Incorporation of Companies and Associations.*

### *Memorandum of association.*

**Mode of forming company.** 5. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Ordinance in respect of registration, form an incorporated company, with or without limited liability.

Imp. § 2.

**Mode of limiting liability of members.** 6. The liability of the members of a company formed under this Ordinance may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

**Memorandum of association.** 7. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid up on their shares, hereinafter referred to as "a company limited by shares," the memorandum of association shall contain the following things, that is to say: 1. The name of the proposed company, with the addition of the word "limited" as the last word in such name. 2. The town or place within the Colony in which the registered office of the company is proposed to be situate. 3. The objects for which the proposed company is to be established. 4. A declaration that the liability of the members is limited; and 5. The amount of capital with which the company propose to be registered divided into shares of a certain fixed amount. Subject to the following regulations: 1. That no subscriber shall take less than one share; and 2. That each subscriber of the memorandum of association shall write opposite to his name the number of shares which he takes.

Imp. § 3.

**Memorandum of association of company limited by guarantee.** 8. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as "a company limited by guarantee," the memorandum of association shall contain the following things, that is to say: 1. The name of the proposed company, with the addition of the word "limited," as the last word in such name; 2. The town or place within the Colony in which the registered office of the company is proposed to be situate; 3. The objects for which the proposed company is to be established; and 4. A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

Imp. § 4.

**Memorandum of association of unlimited company.** 9. Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as "an unlimited company," the memorandum of association shall contain the following things, that is to say: 1. The name of the proposed company; 2. The town or place within the Colony in which the registered office of the company is proposed to be situate; and 3. The objects for which the proposed company is to be established.

Imp. § 5.

**Stamp, signature, and effect of memorandum of association. 10.** 1. The memorandum of association shall bear the same stamp as an agreement, and shall be signed by each subscriber in the presence of, and be attested by, two witnesses. 2. It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Ordinance.

Imp. §§ 6, 14.

**Power of certain companies to alter memorandum of association. 11.** Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed or as altered by special resolution in manner hereinafter mentioned, as: 1. To increase its capital, by the issue of new shares of such amount as it thinks expedient; or 2. To consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock; but save as aforesaid, and save as is hereinafter provided in case of a change of name, rendering unlimited the liability of its directors or managers or of the managing director, reduction of capital and shares, subdivision of shares, and alteration of its objects or form of constitution, no alteration shall be made by any company in the conditions contained in its memorandum of association.

Imp. § 41.

**Power to company to change name. 12.** 1. Any company under this Ordinance, with the sanction of a special resolution of the company passed in manner hereinafter mentioned and with the approval of the Governor-in-Council, may change its name. 2. Upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. 3. No such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Imp. § 8.

*Alteration of memorandum of association, etc.*

**Power for company to alter objects or form of constitution, subject to confirmation by Court. 13.** 1. Subject to the provisions of this Ordinance a company may, by special resolution, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, so far as may be required for any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the company, but in no case shall any such alteration take effect until confirmed on petition by the Court. 2. Before confirming any such alteration the Court must be satisfied: a) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and b) That, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the Court: Provided that the Court may, in the case of any person or class of persons for special reasons, dispense with the notice required by this section. 3. An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper. 4. The Court shall, in exercising its discretion under this Ordinance, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it think fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect; pro-



vided always that it shall not be lawful to expend any part of the capital of the company in any such purchase. 5. The Court may confirm either wholly or in part, any such alterations as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company: a) To carry on its business more economically or more efficiently; or b) To attain its main purpose by new or improved means; or c) To enlarge or change the local area of its operations; or d) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or e) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

Imp. § 9.

**Registration of order, together with memorandum as altered or substituted memorandum, and articles and consequences thereof.** 14. 1. Where a company has altered the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, or has altered the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration together with a copy of the memorandum of association or deed of settlement so altered, or together with a copy of the substituted memorandum and articles of association (as the case may be), shall be delivered by the company to the Registrar within fifteen days from the date of the order, and the Registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Ordinance with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Ordinance) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or as the case may be, such substituted memorandum and articles of association shall apply to the company in the same manner as if the company were a company registered under this Ordinance with such memorandum and articles of association, and the company's deed of settlement shall cease to apply to the company. 2. If a company makes default in delivering to the Registrar any document required by the preceding subsection of this section to be delivered to him, the company shall be liable to a penalty not exceeding fifty dollars for every day during which it is in default. 3. In this and the preceding section the expression "deed of settlement" includes any contract of co-partnership or other instrument constituting or regulating the company and not being an Ordinance of the Legislature, an Order-in-Council, a Royal Charter, or Letters Patent.

Imp. § 9.

#### *Articles of association.*

**Regulations to be prescribed by articles of association. First Schedule: Table A.**

15. 1. The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association, signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. 2. The articles shall be expressed in separate paragraphs, numbered arithmetically. 3. They may adopt all or any of the provisions contained in the Table marked A in the first Schedule to this Ordinance. 4. They shall, in the case of a company, whether limited by guarantee or unlimited, which has a capital divided into shares, state the amount of capital with which the company propose to be registered; and in the case of a company, whether limited by guarantee or unlimited, who have not a capital divided into shares, state the number of members with which the company propose to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration. 5. In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares which he takes.

Imp. § 10.

**Application of Table A. First Schedule: Table A.** 16. In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the Table marked A in the first Schedule to this Ordinance, the last

mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

Imp. § 11.

**Stamp, signature, and effect of articles of association.** 17. 1. The articles of association shall be printed, they shall bear the same stamp as if they were contained in an agreement, and shall be signed by each subscriber in the presence of, and be attested by, two witnesses. 2. When registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Ordinance; and all moneys payable by any member to the company in pursuance of the conditions and regulations of the company, or any of such conditions and regulations, shall be deemed to be a debt due from such member to the company.

Imp. §§ 12, 14.

*General provisions.*

**Registration of memorandum of association and articles of association with prescribed fees. First Schedule, Table B: Table C.** 18. 1. The memorandum of association and the articles of association, if any, shall be delivered to the Registrar, who shall retain and register the same. 2. There shall be paid to the Registrar by a company having a capital divided into shares, in respect of the several matters mentioned in the Table marked B in the first Schedule to this Ordinance, the several fees therein specified, or such smaller fees as the Governor and Court of Policy may from time to time, by resolution, direct; and by a company not having a capital divided into shares, in respect of the several matters mentioned in the Table marked C in the said Schedule, the several fees therein specified, or such smaller fees as the Governor and Court of Policy may from time to time, by resolution, direct.

Imp. § 15.

**Effect of registration.** 19. 1. Upon the registration of the memorandum of association and of the articles of association, in cases where articles of association are required by this Ordinance or by the desire of the parties to be registered, the Registrar shall certify, under his hand, that the company is incorporated, and, in the case of a limited company, that the company is limited. 2. The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company shall, thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up, as is hereinafter mentioned. 3. A certificate of the incorporation of any company given by the Registrar shall be conclusive evidence that all the requirements of this Ordinance in respect of registration have been complied with.

Imp. §§ 16, 17.

**Copies of memorandum and articles to be given to members.** 20. 1. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of the sum of forty-eight cents or such less sum as may be prescribed by the company for each copy. 2. If any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member, in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding five dollars.

Imp. § 18.

**Prohibition of identity of names in companies.** 21. 1. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires. 2. If any company, through inadvertence or otherwise, is, without such consent, as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same so as to be calculated to deceive, such first-mentioned company may, with the sanction of the Registrar, change its name, and upon such



change being made the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Imp. § 8.

*Associations not for profit.*

**Prohibition of certain companies holding land more than two acres. 22.** No company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, shall, without the sanction of the Governor-in-Council, hold more than two acres of land; but the Governor-in-Council may empower any such company to hold lands in such quantity and subject to such conditions as they think fit.

Imp. § 19.

**Special provisions as to associations formed for purposes not of gain. 23.** 1. Where any association is about to be formed under this Ordinance as a limited company, if it proves to the Governor-in-Council that it is formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Governor-in-Council may by licence, under the hand of the Government Secretary, direct such association to be registered with limited liability, without the addition of the word limited to its name, and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Ordinance imposed on limited companies, with the exceptions that none of the provisions of this Ordinance that require a limited company to use the word limited as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the Registrars, shall apply to an association so registered. 2. The licence by the Governor-in-Council may be granted upon such conditions and subject to such regulations as the Governor-in-Council thinks fit to impose, and such conditions and regulations shall be binding on the association, and may, at the option of the Governor-in-Council, be inserted in the memorandum and articles of association, or in both or one of such documents.

Imp. § 20.

*Part II. Registers, Capital, Liability of Members, etc.*

*Registers.*

**Register of members. 24.** Every company under this Ordinance shall cause to be kept in one or more books a register of its members and there shall be entered therein the following particulars (that is to say): a) The names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member; b) The date at which the name of any person was entered in the register as a member; and c) The date at which any person ceased to be a member. 2. Any company acting in contravention of this section shall incur a penalty not exceeding twenty-four dollars for every day during which its default in complying with the provisions of this section continues, and every director or manager of the company who knowingly and wilfully authorizes or permits such contravention shall incur the like penalty.

Imp. § 25.

**Making of annual list of members and summary of particulars. 25.** 1. Every company under this Ordinance having a capital divided into shares shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings is held, are members of the company; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each

of them, and shall contain a summary specifying the following particulars, that is to say: a) The amount of the capital of the company, and the number of shares into which it is divided; b) The number of shares taken from the commencement of the company up to the date of the summary; c) The amount of calls made on each share; d) The total amount of calls received; e) The total amount of calls unpaid; f) The total amount of shares forfeited; g) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them; h) The total amount of shares or stock for which share warrants are outstanding at the date of the summary; and i) The total amount of share warrants which have been issued and surrendered respectively since the last summary was made and the number of shares or amount of stock comprised in each warrant. 2. The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the Registrar.

Imp. § 26.

**Penalty on company not forwarding list or summary to the Registrar. 26.** If any company under this Ordinance having a capital divided into shares makes default in complying with the provisions of this Ordinance with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such company shall incur a penalty not exceeding twenty-four dollars for every day during which such default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 26.

**Giving notice of consolidation or division of shares, or of conversion of capital into stock. 27.** Every company under this Ordinance having a capital divided into shares which has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the Registrar of such consolidation, division, or conversion, specifying the shares so consolidated, divided, or converted.

Imp. § 42.

**Effect of conversion of shares into stock. 28.** Where any company under this Ordinance having a capital divided into shares has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all the provisions of this Ordinance which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

Imp. § 43.

**Giving notice of increase of capital and of members. 29.** 1. Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of any increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the Registrar shall forthwith record the amount of such increase of capital or members. 2. If such notice is not given within the period aforesaid the company in default shall incur a penalty not exceeding twenty-four dollars for every day during which such neglect to give notice continues; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 44.

**Prohibition of entry of trusts on register. 30.** No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies registered under this Ordinance.

Imp. § 27.

**Inspection of register. 31.** 1. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the



company, hereinafter mentioned; and, except when closed as hereinafter mentioned, it shall, during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of twenty-four cents, or such less sum as the company may prescribe for each inspection. 2. Every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of twenty-four cents for every hundred words required to be copied. 3. If such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding ten dollars, and a further penalty not exceeding ten dollars for every day during which such refusal continues; and every director and manager of the company who knowingly authorizes or permits such refusal shall incur the like penalty; and, in addition to the above penalty, any Judge of the Supreme Court may, by order, compel an immediate inspection of the register.

Imp. § 30.

**Power to close register.** 32. Any company under this Ordinance may, on giving notice by advertisement in the *Gazette* and in some newspaper circulating in the county in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Imp. § 31.

**Remedy for improper entry or omission of entry in register.** 33. 1. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this Ordinance, or if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may by motion in the Supreme Court of British Guiana, or before any Judge thereof, apply for an order of the Court that the register may be rectified. 2. The Court or Judge may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, and any damages which the party aggrieved may have sustained. 3. The Court or Judge may, in any proceeding under this section, decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the Court or Judge may in any such proceedings decide any question which it may be necessary or expedient to decide for the rectification of the register: Provided that the Court or Judge may direct an issue to be tried, in which any question of law may be raised, or the Court may refer the parties to their ordinary remedy.

Imp. § 32.

**Rectification of register.** 34. Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the Registrar, the Court or Judge shall, by its order, direct the Registrar to make such rectification.

Imp. § 32.

**Use of register as evidence.** 35. The register of members shall be prima facie evidence of any matters by this Ordinance directed or authorized to be inserted therein.

Imp. § 33.

#### *Branch registers.*

**Power for companies to have branch registers.** 36. 1. Any company having a capital divided into shares and whose objects comprise the transaction of business in the United Kingdom or in any British Colony may, if authorized to do so by its regulations as originally framed or as altered by special resolution, cause to be kept in that part of the United Kingdom or in any such Colony in which it transacts business, a branch register or registers of members resident in the United Kingdom or in such Colony. 2. The company shall give to the Registrar notice of the situation of the office where any such branch register (in this section called a branch register) is kept, and of any change therein, and of the discontinuance of any such office in the event of the same being discontinued. 3. A branch register shall as regards the

particulars entered therein be deemed to be a part of the company's register of members, and shall be *prima facie* evidence of all particulars entered therein. Any such register shall be kept in the manner provided by this Ordinance with these qualifications, that the advertisement mentioned in section thirty-two of this Ordinance shall be inserted in some newspaper circulating in the district wherein the register to be closed is kept. 4. The company shall transmit to its registered office a copy of every entry in its branch register or registers as soon as may be after such entry is made, and the company shall cause to be kept at its registered office, duly entered up from time to time, a duplicate or duplicates of its branch register or registers. The provisions of section thirty-one of this Ordinance shall apply to every duplicate, and every such duplicate shall, for all the purposes of this Ordinance, be deemed to be part of the register of members of the company. 5. Subject to the provisions of this Ordinance with respect to the duplicate register, the shares or stock registered in a branch register shall be distinguished from the shares or stock registered in the principal register, and no transactions with respect to any shares or stock registered in a branch register shall, during the continuance of the registration of such shares or stock in such branch register, be registered in any other register. 6. The company may at any time discontinue to keep any branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the United Kingdom or in such colony, or to the register of members kept at the registered office of the company. 7. Subject to the provisions of this section any company may by its regulations as originally framed or as altered by special resolution make such provisions as it thinks fit respecting the keeping of branch registers.

Imp. §§ 34, 35.

#### *Distribution of capital.*

**Nature of interest of member in company.** 37. The shares or other interest of any member in a company under this Ordinance shall be of the nature of moveable property, capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of immoveable property; and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

Imp. § 22.

**Definition of "member."** 38. The subscribers of the memorandum of association of any company under this Ordinance shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and, upon the registration of the company, shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company under this Ordinance, and whose name is entered on the register of members, shall be deemed to be a member of the company.

Imp. § 24.

**Transfer by heir, etc.** 39. Any transfer of the share or other interest of a deceased member of the company under this Ordinance made by his heir or executor shall, notwithstanding such heir or executor may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Imp. § 29.

**Certificate of shares or stock.** 40. A certificate under the common seal of the company specifying any share or shares or stock held by any member of a company shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.

Imp. § 23.

#### *Reduction of capital.*

**Power to company to reduce capital.** 41. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the Registrar as is hereinafter mentioned.

Imp. § 46.

**Company to add "and reduced" to its name for a limited period.** 42. Subject to the provisions hereinafter contained, the company shall, after the date of the passing



of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company within the meaning of this Ordinance.

Imp. § 48.

**Company to apply to the Court for an order confirming reduction. 43.** A company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction, and, on the hearing of the petition, the Court may, if satisfied that, with respect to every creditor of the company who, under the provisions of this Ordinance is entitled to object to the reduction, either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, make an order confirming the reduction on such terms and subject to such conditions as it thinks fit.

Imp. §§ 47, 50.

**Creditors may object to reduction, and list of objecting creditors to be settled by the Court. 44.** 1. Subject to the provisions hereinafter contained where a company proposes to reduce its capital, every creditor of the company who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction and to be entered in the list of creditors who are so entitled to object. 2. The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debt or claims and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objection to the proposed reduction.

Imp. § 49.

**Court may dispense with consent of creditor on security being given for his debt. 45.** Where a creditor whose name is entered on the list of creditors and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may, if it thinks fit, dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned, that is to say: 1. If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated; and 2. If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company is willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it thinks fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such enquiry and adjudication shall be set apart and appropriated.

Imp. § 49.

**Order and minute to be registered. 46.** 1. The Registrar shall, upon the production to him of an order of the Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute, approved by the Court, showing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) proposed to be deemed to have been paid up on each share, register the order and minute, and on such registration, the special resolution confirmed by the order so registered shall take effect. 2. Notice of such registration shall be published in such manner as the Court may direct. 3. The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

Imp. § 51.

**Minute to form part of memorandum of association. 47.** The minute shall, when registered, be deemed to be substituted for the corresponding part of the memo-

randum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association, and, subject as in this Ordinance mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Imp. § 52.

**Saving of rights of creditors who are ignorant of proceedings. 48.** If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Ordinance is, in consequence of his ignorance of the proceedings taken with a view to such reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable within the meaning of section one hundred and twenty-five of this Ordinance to pay to the creditors the amount of such debt or claim, every person who was a member of the company at the date of registration of the order and minute relating to the reduction of the capital of the company, shall be liable to contribute for the payment of such debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and, on the company being wound up, the Court may, if it thinks fit on the application of such creditor and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, settle a list of such contributories accordingly and make and enforce calls and orders on the contributories settled in such list in the same manner in all respects as if they were ordinary contributories in winding-up, but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

Imp. § 53.

**Copy of registered minute. 49. 1.** A minute shall, when registered, be embodied in every copy of the memorandum of association issued after its registration. **2.** If any company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding five dollars for each copy in respect of which such default is made; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 52.

**Penalty on concealment of name of creditor. 50.** If any director, manager, or officer of the company: **1.** Wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction; or **2.** Wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company; or **3.** Aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be deemed guilty of a misdemeanour, and shall be liable to be indicted and, if convicted, to be punished accordingly.

Imp. § 54.

**Provisions relating to reduction in certain specified cases. 51.** Subject to the following provisions of this Ordinance, where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid up capital: **1.** The creditors of the company shall not, unless the Court otherwise directs, be entitled to object or required to consent to the reduction; and **2.** It shall not be necessary, before the presentation of the petition, for confirming the reduction, to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced" as hereinbefore mentioned.

Imp. §§ 48, 49.

**Power to the Court to require publication of particulars relating to reduction of capital. 52. 1.** In any case in which the Court thinks fit so to do, it may require the company to publish, in such manner as it thinks fit, the reasons for the reduction of its capital, or such other information in regard to the reduction of its capital as the Court may think expedient, with a view to give proper information to the public in relation to the reduction of its capital by a company, and, if the Court thinks fit, the causes which led to such reduction. **2.** The minute required to be registered in the case of reduction of capital shall show in addition to the other particulars required



by law, the amount, if any, at the date of the registration of the minute proposed to be registered which is deemed to have been paid up on each share.

Imp. § 55.

**Power to reduce capital by the cancellation of unissued shares.** 53. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which at the date of the passing such resolution have not been taken, or agreed to be taken by any person, and the provisions of sections forty-one to fifty (both inclusive) shall not apply to any reduction of capital made in pursuance of this section.

Imp. § 41.

**Accumulated profits may be returned to shareholders in reduction of paid up capital.** 54. 1. When any company has accumulated a sum of undivided profits, which, with the consent of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it shall be lawful for the company, by special resolution, to return the same or any part thereof to the shareholders in reduction of the paid up capital of the company, the unpaid capital being thereby increased by a similar amount. 2. The powers vested in the directors of making calls upon the shareholders in respect of moneys unpaid upon the shares shall extend to the amount of unpaid capital as augmented by such reduction.

Imp. § 40 (1).

**No resolution to take effect till particulars have been registered.** 55. No such special resolution as last aforesaid shall take effect until a memorandum, showing the particulars required by law in the case of a reduction of capital by order of the Court shall have been produced and registered by the Registrar.

Imp. (§ 40 2).

**Power to any shareholder within one month after passing of resolution to require company to retain moneys paid upon shares held by such person.** 56. 1. Upon any reduction of paid up capital made in pursuance of the two last preceding sections, it shall be lawful for any shareholder or for any one or more of several joint shareholders, within one month after the passing of the special resolution for such reduction, to require the company to retain and the company shall retain accordingly, the whole of the moneys actually paid upon the shares held by such person, either alone or jointly with any other person or persons, and which, in consequence of such reduction, would otherwise be returned to him or them; and thereupon the shares in respect of which the said moneys are so retained shall, in regard to the payment of dividends thereon, be deemed to be paid up to the same extent only as the shares on which payment as aforesaid has been accepted by the shareholders in reduction of their paid up capital. 2. The company shall invest and keep invested the moneys so retained in such securities authorized for investment by trustees, as the company may determine; and upon the moneys so invested, or upon so much thereof as from time to time exceeds the amount of calls subsequently made upon the shares in respect of which such moneys shall have been retained, the company shall pay such interest as may be received by them from time to time on such securities; and the amount so retained and invested shall be held to represent the future calls which may be made to replace the capital so reduced on those shares, whether the amount obtained on sale of the whole, or such proportion thereof as represents the amount of any call when made produces more or less than the amount of such call.

Imp. § 40 (3, 4).

**Company to specify amounts which shareholders have required them to retain; also to specify amounts of profits returned to shareholders.** 57. From and after such reduction of capital by the return of accumulated profits, the company shall specify in the annual lists of members to be made by them in pursuance of section twenty-five the amounts which any of the shareholders of the company have required the company to retain, and the company has retained accordingly, in pursuance of the last preceding section; and the company shall also specify, in the statements of accounts laid before any general meeting of the company, the amount of the undivided profits of the company which have been returned to the shareholder in reduction of the paid-up capital of the company as hereinbefore mentioned.

Imp. § 40 (6).

**Construction of "capital" and powers to reduce capital.** 58. The word "capital" as used in the foregoing provisions relating to the reduction of capital, shall include

paid-up capital, and the powers hereby conferred to reduce capital shall include a power to cancel any lost or any capital capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability, if any, remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved, notwithstanding anything hereinbefore contained.

*Reserve capital.*

**Reserve capital of company, how provided. 59.** 1. An unlimited company may, by the resolution passed by its members when assenting to registration as a limited company under section two hundred and forty-one of this Ordinance, and for the purpose of such registration or otherwise, increase the nominal amount of its capital, by increasing the nominal amount of each of its shares; provided always that no part of such increased capital shall be capable of being called up, except in the event of and for the purposes of the company being wound up. 2. In cases where no such increase of nominal capital may be resolved upon, an unlimited company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up. 3. A limited company may, by a special resolution, declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purposes of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

Imp. §§ 58, 59.

*Subdivision of shares.*

**Shares may be divided into shares of smaller amount. 60.** Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as by subdivision of its existing shares or any of them to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association; provided that, in the subdivision of the existing shares, the proportion between the amount which is paid and the amount, if any, which is unpaid on each share of reduced amount, shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Imp. § 41.

**Special resolutions to be embodied in memorandum of association. 61.** 1. The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution. 2. If any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding five dollars for each copy in respect of which such default is made; and every director or manager of the company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 41.

*Calls upon shares.*

**Company may have some shares fully paid and others not. 62.** Nothing in this Ordinance shall be deemed to prevent any company under this Ordinance, if authorized by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following things, namely: 1. Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls; 2. Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made; or 3. Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Imp. § 39.



**Manner in which shares are to be issued and held. 63.** 1. Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the Registrar at or before the issue of such share. 2. Whenever any shares in the capital of any company under this Ordinance, credited as fully or partly paid up are issued for a consideration other than cash, and at or before the issue of such shares no contract or no sufficient contract is filed with the Registrar in compliance with this section, the company or any person interested in such shares or any of them may apply to the Court for relief, and the Court, if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief, may make an order for the filing with the Registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period it shall, in relation to such shares, operate as if it had been duly filed with the Registrar aforesaid before the issue of such shares. 3. Any such application may be made in the manner in which an application to rectify the register of members may be made under section thirty-three of this Ordinance, and either before or after an order has been made or an effective resolution has been passed for the winding-up of such company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid, and any such application shall, if not made by the company, be served on the company. 4. Any such order may be made on such terms and conditions as the Court may think fit, and the Court may make such order as to costs as it deems proper, and may direct that an office copy of the order shall be filed with the Registrar aforesaid, and the order shall in all respects have full effect. 5. Where the Court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience, or is impracticable, it may, in lieu thereof, direct the filing of a memorandum in writing, in a form approved by the Court, specifying the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period it shall in relation to such shares operate as if it were a sufficient contract in writing within the meaning of this section and had been duly filed with the Registrar before the issue of such shares. 6. The jurisdiction by this section given to the Court is not by implication to curtail or derogate from its jurisdiction to grant relief in any such case under section thirty-three of this Ordinance or otherwise.

*Transfer of shares.*

**Transfer may be registered at request of transferor. 64.** A company shall, on the application of the transfer<sup>1)</sup> of any share or interest in the company, enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same condition as if the application for such entry were made by the transferee.

Imp. § 28.

**Power to make compensation for losses from forged transfer. Provision where one company takes over, shares etc., of another company. 65.** 1. Where a company issues or has issued shares, stock, or securities transferable by an instrument in writing or by an entry in any books or register kept by or on behalf of the company, it shall have power to make compensation by a cash payment out of its funds for any loss arising from a transfer of any such shares, stock, or securities, in pursuance of a forged transfer or of a transfer under a forged power of attorney. 2. Any company may, if it thinks fit, provide, either by fees not exceeding the rate of twenty-five cents on every five hundred dollars transferred with a minimum charge equal to that for one hundred dollars, to be paid by the transferee upon the entry of the transfer in the books of the company, or by insurance, reservation of capital, accumulation of income, or in any other manner which it may resolve upon, a fund to meet claims for such compensation. 3. For the purpose of providing such compensation any company may borrow on the security of its property. 4. Any such company may impose such reasonable restrictions on the transfer of its shares, stock, or securities or with respect to powers of attorney for the transfer thereof, as it may consider requisite for guarding against losses arising from forgery. 5. Where a company compensates a person under this Ordinance for any loss arising

<sup>1)</sup> *Sic*; obviously "transferor."

from forgery, the company shall, without prejudice to any other rights or remedies, have the same rights and remedies against the person liable for the loss as the person compensated would have had. 6. Where the shares, stock, or securities of a company, have by amalgamation or otherwise become the shares, stock, or securities of another company, the last mentioned company shall have the same power under this section as the original company would have had if it had continued.

*Share warrants.*

**Warrant of limited shares fully paid up may be issued in name of bearer. 66.** In the case of a company limited by shares, the company, if authorized so to do by its regulations as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may with respect to any share which is fully paid up or with respect to stock, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares, or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a share warrant.

Imp. § 37 (1).

**Effect of share warrant. 67.** A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

Imp. § 37 (2).

**Registration of bearer of a share warrant in the register. 68.** The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares in stock specified therein, without the share warrant being surrendered and cancelled.

Imp. § 37 (3).

**Regulations of the company may make the bearer of a share warrant a member. 69.** The bearer of a share warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of this Ordinance, either to the full extent or or<sup>1)</sup> such purposes as may be prescribed by the regulations; provided that the bearer of a share warrant shall not be qualified, in respect of the shares or stock specified in such warrant, for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

Imp. § 37 (4).

**Entries in register when share warrant issued. 70. 1.** On the issue of a share warrant in respect of any share or stock, the company shall strike out of its register of members, the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars: a) The fact of the issue of the warrant; b) A statement of the shares or stock included in the warrant distinguishing each share by its number; and c) The date of the issue of the warrant. 2. Until the warrant is surrendered, the above particulars shall be deemed to be the particulars which are required by section twenty-four of this Ordinance to be entered in the register of members of a company; and on the surrender of a warrant, the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Imp. § 37 (5, 6).

*Contracts.*

**Contracts on behalf of company. 71. 1.** Contracts on behalf of any company under this Ordinance may be made as follows, that is to say: a) Any contract which, if made between private persons would be by law required to be in writing and if made according to the law of this Colony, to be under seal, may be made on behalf of the company in writing under the common seal of the company and such contract may in the same manner be varied or discharged; b) Any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company,

<sup>1)</sup> Sic; obviously "for."



and such contract may in the same manner be varied or discharged: and c) Any contract which, if made between private persons, would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged. 2. All contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors and all other parties thereto, their heirs, executors, or administrators, as the case may be.

Imp. § 76. See *People Livery Stable Co., Ltd. v. Garroway*, (30th December, 1905); *Griffith v. Versailles Co.*, (7th April, 1906).

#### *Liability of members.*

**Liability of present and past members of company. 72.** Subject to the provisions hereinafter contained with respect to the unlimited liability of the directors of a company in the event of a company formed under this Ordinance being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, that is to say: 1. No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up; 2. No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member; 3. No past member shall be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance; 4. In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member; 5. In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association. 6. Nothing in this Ordinance shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract; and 7. No sum due to any member of the company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

Imp. § 123.

#### *Unlimited liability of directors.*

**Company may have directors with unlimited liability. 73.** Where a company is formed as a limited company under this Ordinance, the liability of the directors or managers of such company or of the managing director may, if so provided by the memorandum of association, be unlimited.

Imp. § 60.

**Liability of director past and present when liability is unlimited. 74.** The following modifications shall be made in section seventy-two of this Ordinance with respect to the contributions to be required, in the event of the winding-up of a limited company under this Ordinance from any director or manager whose liability is, in pursuance of this Ordinance, unlimited, that is to say: 1. Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall in addition to his liability, if any, to contribute as an ordinary member, be liable to contribute as if he were, at the date of the commencement of such winding-up, a member of an unlimited company; 2. No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount, if any, which he is liable to contribute as an ordinary member of the company; 3. No contribution required from any past director or manager in respect of any debt or liability of the company

contracted after the time at which he ceased to hold such office, shall exceed the amount, if any, which he is liable to contribute as an ordinary member of the company: and 4. Subject to the provisions contained in the regulations of the company, no contribution required from any director or manager shall exceed the amount, if any, which he is liable to contribute as an ordinary member unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up.

Imp. § 123.

**Director with unlimited liability may have set off as under section 159. 75.** In the event of the winding-up of any limited company, the Court may, if it thinks fit, make to any director or manager of such company whose liability is unlimited, the same allowance by way of set off as under section one hundred and fifty-nine it may make to a contributory where the company is not limited.

**Notice to be given to director on his election that his liability will be unlimited. 76.** 1. In any limited company in which the liability of a director or manager is unlimited, the directors or managers of the company, if any, and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited; and the promoters, directors, managers, and secretary, if any, of the company, or one of them, shall before such person accepts such office or acts therein, give him notice in writing that his liability will be unlimited. 2. If any director, manager, or proposer makes default in adding such statement, or if any promoter, director, manager, or secretary makes default in giving such notice, he shall be liable to a penalty not exceeding five hundred dollars, and shall also be liable for any damage which the person so elected or appointed may sustain from such default, but the liability of the person elected or appointed shall not be affected by such default.

Imp. § 60.

**Any limited company may by special resolution make liability of directors unlimited. 77.** 1. Any limited company may by a special resolution, if authorized to do so by its regulations, either as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers or of the managing director. 2. Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution; and any default in this respect shall be deemed to be a default in complying with the provisions of section ninety-seven, and shall be punished accordingly.

Imp. § 61.

#### *Liability for false prospectus.*

**Liability for statements in prospectus. 78.** 1. Where after the passing of this Ordinance a prospectus or notice invites persons to subscribe for shares in or debentures, or debenture stock of a company every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorized such naming of him is named in the prospectus or notice as a director of the company or as having agreed to become a director of the company either immediately, or after an interval or<sup>1)</sup> time, and every promoter of the company and every person who has authorized the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith, unless it is proved: a) With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe that the statement was true; and b) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by

<sup>1)</sup> *Sic*; obviously "of"



such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation: Provided always that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation, such director, person named, promoter, or other person who authorized the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and c) With respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of or extract from such document; or unless it be proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice and that the prospectus or notice was issued without his authority or consent or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given. 2. A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company. 3. Where any company existing at the passing of this Ordinance, which has issued shares or debentures, shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue a prospectus or notice no director of such company shall be liable in respect of any statement therein, unless he shall have authorized the issue of such prospectus or notice, or have adopted or ratified the same. 4. In this section the word "expert" includes any person whose profession gives authority to a statement made by him.

Imp. § 84 (1, 2, 5).

**Indemnity where name of person has been improperly inserted as a director.** 79. Where any such prospectus or notice as aforesaid contains the name of a person as a director of the company or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorized the issue of such prospectus or notice, shall be liable to indemnify the person named as a director of the company, or as having agreed to become a director thereof as aforesaid against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

Imp. § 84 (3).

**Contribution from co-directors, etc.** 80. Every person who by reason of his being a director, or as having agreed to become a director, or of his having authorized the issue of the prospectus or notice has become liable to make any payment under the provisions of this Ordinance, shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

Imp. § 84 (4).

**Prospectus, etc., to specify contracts made by company, etc.** 81. Every prospectus of a company and every notice inviting persons to subscribe for shares in any joint stock company shall respectively specify the dates of and the names of the parties to any contract entered into by the company or the promoters, directors, or trustees thereof before the issue of such prospectus or notice, whether subject to adoption by the directors or the company or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking

shares in the company on the faith of such prospectus, unless he shall have had notice of such contract.

Imp. § 81.

### *Part III. Management and Administration of Companies and Associations.*

#### *Provisions for protection of creditors.*

**Registered office of company. 82.** 1. Every company under this Ordinance shall have a registered office, to which all communications and notices may be addressed. 2. If any company under this Ordinance carries on business without having such an office, it shall incur a penalty not exceeding twenty-four dollars for every day during which business is so carried on.

Imp. § 62.

**Notice of situation of registered office. 83.** Notice of the situation of such registered office, and of any change therein, shall be given to the Registrar, and recorded by him; and, until such notice is given, the company shall not be deemed to have complied with the provisions of this Ordinance with respect to having a registered office.

Imp. § 62.

**Publication of name by limited company. 84.** Every limited company under this Ordinance, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

Imp. § 63.

**Penalties for non-publication of name, etc. 85.** 1. If any limited company under this Ordinance does not paint or affix, and keep painted or affixed, its name in manner directed by this Ordinance, it shall be liable to a penalty not exceeding twenty-four dollars for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty. 2. If any director, manager, or officer of such company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such company, or signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, endorsement, cheque, or order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of two hundred and forty dollars, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Imp. § 63.

**Register of mortgages. 86.** 1. Every limited company under this Ordinance shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of the charge created, and the names of the mortgagees or persons entitled to such charge. 2. If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding two hundred and forty dollars. 3. The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and, if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company



who authorizes or knowingly and wilfully permits such refusal, shall incur a penalty not exceeding twenty-four dollars, and a further penalty not exceeding ten dollars for every day during which such refusal continues; and, in addition to the above penalty, any Judge of the Supreme Court may, by order, compel an immediate inspection of the register.

Imp. §§ 93, 99.

**Certain companies to publish prescribed statement. First Schedule: Form D.**

**87.** 1. Every insurance company, and every deposit, provident, or benefit society under this Ordinance shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the Form marked D in the first Schedule to this Ordinance, or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on. 2. If default is made in compliance with the provisions of this section, the company shall be liable to a penalty not exceeding twenty-four dollars for every day during which such default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty. 3. Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding twenty-four cents.

Imp. § 108.

**Keeping of register of directors. 88.** 1. Every company under this Ordinance not having a capital divided into shares shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers. 2. If any company as aforesaid makes default in keeping a register of its directors or managers or in sending a copy of such register to the Registrar in compliance with the provisions of this section, or in notifying to the Registrar any change which may take place in such directors or managers, it shall incur a penalty not exceeding twenty-four dollars for every day during which such default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 75.

**Bills of exchange and promissory notes of company. 89.** A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of any company under this Ordinance if made, accepted, or endorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or endorsed by or on behalf or on account of the company, by any person acting under the authority of the company.

Imp. § 77.

**Prohibition against carrying on business with less than seven members. 90.** If any company under this Ordinance carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member.

Imp. § 115.

*Provisions for protection of members.*

**Company to hold meetings within four months after registration. 91.** 1. Every company formed under this Ordinance shall hold a general meeting within four months after its memorandum of association is registered. 2. If such meeting is not held the company shall be liable to a penalty not exceeding twenty-five dollars a day for every day after the expiration of such four months until the meeting is held; and every director or manager of the company and every subscriber of the memorandum of association who knowingly authorizes or permits such default shall be liable to the like penalty.

Imp. § 65.

**General meetings of company. 92.** A general meeting of every company under this Ordinance shall be held once at the least in every year.

Imp. § 64.

**Power to alter regulations by special resolution. 93.** 1. Subject to the provisions of this Ordinance and to the conditions contained in the memorandum of association, any company formed under this Ordinance may in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the Table marked A in the first Schedule to this Ordinance, where such Table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company. 2. Any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

**Mode of passing special resolution. 94.** 1. A resolution passed by a company under this Ordinance shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy (in cases where by the regulations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy, at a subsequent general meeting of which notice has been duly given, and held at an interval of not less than fourteen days and not more than one month from the date of the meeting at which such resolution was first passed. 2. At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. 3. Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company. 4. In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

Imp. § 69.

**Provision where no regulations as to votes and meetings. 95.** In default of any regulations as to voting, every member shall have one vote, and, in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the Table marked A in the first Schedule to this Ordinance; and, in default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same, and, in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Imp. § 67.

**Registration of special resolution. 96.** 1. A copy of any special resolution that is passed by any company under this Ordinance shall be printed and forwarded to the Registrar, and be recorded by him. 2. If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding ten dollars for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 70.

**Copies of special resolution. 97.** 1. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution. 2. Where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to every member requesting the same on payment of forty-eight cents, or such less sum as the company may



direct. 3. If any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding five dollars for each copy in respect of which such default is made; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 70.

**Execution of deed abroad by company. Official seals for use abroad. Agents for affixing such seals. Duration of such agent's powers. Statement of date of, and effect of affixing such seal. Restriction on exercise of foregoing powers.** 98. 1. Any company under this Ordinance may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the Colony. 2. Every deed signed by such attorney, on behalf of the company, and under his seal, shall be binding on the company and have the same effect as if it were under the common seal of the company. 3. In addition to the powers conferred by the foregoing subsections any company under this Ordinance whose objects require or comprise the transaction of business in countries not within this Colony may cause to be prepared an official seal for and to be used in any place, district, or territory situate out of this Colony in which the business of the company is carried on; and every such official seal shall be a fac-simile of or as nearly as practicable a fac-simile of the common seal of the company, with the exception that on the face thereof shall be inscribed the name of each and every place, district, or territory in and for which it is to be used: Provided, that it shall be lawful for any such company as aforesaid from time to time to break up and renew any official seal or seals and to vary the limits within which it is intended to be used. 4. Every company having or using any such official seal as is authorized by this section may from time to time by any instrument or instruments in writing under the common seal of the company, empower any agent or agents specially appointed for the purpose, or any local agent, board, committee, manager, or commissioner appointed under the provisions of the articles of association of such company, in any place, district, or territory situate out of this Colony where the business of the company shall for the time being be carried on, to affix such official seal to any deed, contract, or other instrument to which the company is or shall be made a party in such place, district, or territory; and no other order of the company or the board of directors thereof shall be necessary to authorize any such seal to be affixed to any deed, contract, or other instrument. 5. Every power granted under the last preceding subsection shall as between the company, their successors and assigns, on the one hand, and the person or persons dealing with the agent or agents, board, committee, manager, or commissioner named in the instrument conferring the power, and all parties claiming through or under such person or persons, on the other hand, continue in force during the period, if any, mentioned in the instrument conferring the power, or if no period be there mentioned, then until notice of the revocation or determination of the power shall have been given to such person or persons as aforesaid. 6. Whenever any such official seal as aforesaid is affixed to any document, the person affixing the same shall, by writing under his hand, and written on the document to which the seal is affixed, certify the date when and the place where the same is affixed; and any document to which any such seal has been duly affixed within the district or territory or place the name whereof is inscribed on such seal shall bind the company in the same way, and to the same extent, and have the same force and effect, as if it had been duly sealed with the common seal of the company. 7. The powers given by subsections three and four of this section shall be exercised by such companies only as are expressly authorized to exercise the same by their articles of association or by a special resolution passed according to the provisions of this Ordinance and shall be exercised by such companies subject to any directions or restrictions in their articles of association or in the special resolution contained.

Imp. §§ 78, 79.

**Examination of affairs of company by inspectors.** 99. The Governor-in-Council may appoint one or more competent inspectors to examine into the affairs of any company under this Ordinance, and to report thereon, in such manner as the Governor-in-Council may direct, on the applications following, that is to say: 1. In the case of a banking company which has a capital divided into shares, on the application of members holding not less than one-third part of the whole shares of the company for the time being issued; 2. In the case of any other company which has a capital

divided into shares, on the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued; and 3. In the case of any company not having a capital divided into shares, on the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

Imp. § 109.

**Evidence in support of application for inspection. 100.** 1. The application shall be supported by such evidence as the Governor-in-Council may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same. 2. The Governor-in-Council may also require the applicants to give security for payment of the costs of inquiry before appointing any inspector or inspectors.

Imp. § 109.

**Inspection of books. 101.** 1. It shall be the duty of all officers and agents of the company to produce, for the examination of the inspectors, all books and documents in their custody or power; and any inspector may examine upon oath the officers and agents of the company in relation to its business and may administer such oath accordingly. 2. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding twenty-four dollars in respect of each offence.

Imp. § 109.

**Result of examination, how dealt with. 102.** 1. On the conclusion of the examination, the inspectors shall report their opinion to the Governor-in-Council, and such report shall be written or printed, as the Governor-in-Council may direct. 2. A copy of the report shall be forwarded by the Government Secretary to the registered office of the company, and a further copy shall at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them. 3. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members on whose application the inspectors were appointed, unless the Governor-in-Council direct the same to be paid out of the assets of the company, which he is hereby authorized to do.

Imp. § 109.

**Power to company to appoint inspectors. 103.** 1. Any company under this Ordinance may, by special resolution, appoint inspectors for the purpose of examining into the affairs of the company. 2. The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Governor-in-Council, with this exception, that, instead of making their report to the Governor-in-Council, they shall make the same in such manner and to such persons as the company in general meeting may direct. 3. The officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Governor-in-Council.

Imp. § 110.

**Use of report of inspectors as evidence. 104.** A copy of the report of any inspectors under this Ordinance, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Imp. § 111.

#### *Notices.*

**Service of notice on company. 105.** Any summons, notice, order, or other document required to be served on the company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company, at its registered office.

Imp. § 116.

**Rules as to service by post. 106.** Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period, if any, prescribed for the service thereof; and in proving service of such document, it shall be sufficient to prove that such document was properly directed and that it was put as a prepaid letter into the post office.



**Authentication of notices of company.** 107. Any summons, notice, order, or proceeding requiring authentication by the company may be signed by any director, secretary, or other authorized officer of the company and need not be under the common seal of the company, and the same may be in writing or in print or partly in writing and partly in print.

Imp. § 117.

*Offences.*

**Forgery of share warrant, etc.** 108. Every person who: 1. Forges or alters or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or document purporting to be a share warrant or coupon issued in pursuance of this Ordinance; or 2. Demands, or endeavours to obtain or receive, any share or interest of or in any company under this Ordinance or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered share warrant, coupon, or document purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to penal servitude for life or for any term not less than three years or to imprisonment for any term not exceeding two years with or without hard labour and with or without solitary confinement.

Imp. § 38.

**Falsely personating owner of shares.** 109. Every person who falsely and deceitfully personates any owner of any share or interest of or in any company, or of any share warrant or coupon issued in pursuance of this Ordinance and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if such offender were the true and lawful owner, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to penal servitude for life or for any term not less than three years, or to imprisonment for any term not exceeding two years with or without hard labour and with or without solitary confinement.

Imp. § 38.

**Engraving plates, etc.** 110. Every person who, without lawful authority or excuse, the proof whereof shall be on him: 1. Engraves or makes upon any plate, wood, stone, or other material, any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company under and in pursuance of this Ordinance, or to be a blank share warrant or coupon issued or made as aforesaid, or to be a part of such share warrant or coupon; or 2. Uses any such plate, wood, stone, or other material, for the making or printing any such share warrant or coupon, or any such blank share warrant or coupon, or any part thereof respectively; or 3. Knowingly has in his custody or possession any such plate, wood, stone, or other material; shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to penal servitude for any term not exceeding fourteen years and not less than three years, or to imprisonment for any term not exceeding two years with or without hard labour and with or without solitary confinement.

Imp. § 38.

*Legal proceedings.*

**Procedure and appeal.** 111. All offences under this Ordinance made punishable by any pecuniary penalty may be prosecuted summarily before any stipendiary magistrate in manner directed by any Ordinance for the time being in force regulating proceedings before stipendiary magistrates in the exercise of their summary jurisdiction, and the decisions in respect thereof shall be subject to the appeal provided by any Ordinance for the time being in force regulating appeals from the decisions of stipendiary magistrates.

Imp. § 276.

**Record of proceedings at meetings.** 112. 1. Every company under this Ordinance shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose. 2. Any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and, until the contrary is proved, every general meeting of

the company, or meeting of directors or managers, in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had, and all appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

**Provision as to costs in action brought by limited company. 113.** Where a limited company is plaintiff in any action, suit, or other legal proceeding, any Judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that, if the defendant is successful in his defence, the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Imp. § 278. The fact that the action has been brought with the consent of the Court does not affect the right of the defendant to security for costs, if he is otherwise entitled to such security. — *British Guiana Ice Co. v. Birch*, (6th January, 1909).

**Claim and demand in action by company against member. 114.** In any action or suit brought by the company against any member to recover any call or moneys due from such member in his character of member it shall not be necessary to set forth the special matter but it shall be sufficient to allege that the defendant is a member of the company and is indebted to the company in respect of a call made or other moneys due whereby an action or suit has accrued to the company.

**Reception of certified copies of documents as legal evidence. 115.** Any certificate of the incorporation of any company given by the Registrar for the time being shall be received in evidence as if it were the original certificate; and any copy of or extract from any of the documents or part of the documents kept and registered at any office for the registration of joint stock companies if duly certified to be a true copy under the hand of the Registrar for the time being, and whom it shall not be necessary to prove to be the Registrar shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document.

Imp. § 17.

#### *Use and alteration of forms.*

**Use of forms. Second Schedule. 116.** 1. The forms contained in the second Schedule to this Ordinance, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer. 2. The Governor-in-Council may from time to time, by resolution, make such alterations in the Tables and Forms contained in the first Schedule to this Ordinance, so that they do not increase the amount of fees payable to the Registrar in the said first Schedule mentioned, and in the Forms in the said second Schedule, or may make such additions to the last mentioned Forms, as the Governor-in-Council may deem requisite. 3. Any such Table or Form, when altered, shall be published in the *Gazette*, and, on such publication being made, such Table or Form shall have the same force as if it were included in the Schedules to this Ordinance: Provided that no such alteration made in the Table marked A in the said first Schedule shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of such Table.

Imp. § 118.

#### *Arbitration.*

**Power to company to refer matter to arbitration. 117.** Any company under this Ordinance may from time to time, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with the *Companies Clauses and Powers Consolidation Ordinance, 1846*, any existing or future difference, question, or other matter whatsoever in dispute between itself and any other company or person, and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

Imp. § 119.

**Application of certain enactments with respect to arbitration. 118.** All the provisions of the *Companies Clauses and Powers Consolidation Ordinance, 1846*, with respect to arbitrations shall be deemed to apply to arbitrations between companies



and persons in pursuance of this Ordinance; and in the construction of such provisions the expression "the promoters of the undertaking" shall be deemed to include any company authorized by this Ordinance to refer disputes to arbitration.

Imp. § 119.

#### *Part IV. Winding-up of Companies and Associations.*

##### *Preliminary.*

**Meaning of "contributory". 119.** The term "contributory" means every person liable to contribute to the assets of the company under this Ordinance, in the event of the same being wound up; and it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Imp. § 124.

**Nature of liability of contributory. 120.** The liability of any person to contribute to the assets of a company under this Ordinance, in the event of the same being wound up, shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made, as hereinafter mentioned, for enforcing such liability; and it shall be lawful in case of the insolvency of any contributory to prove against his estate the estimated value of his liability to future calls as well as calls already made.

Imp. § 125.

**Contributories in case of death. 121.** 1. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his heirs and executors shall be liable to contribute to the assets of the company in the discharge of the liability of such deceased contributory, and such heirs and executors shall be deemed to be contributories accordingly. 2. In this section the term "executors" includes the Administrator-General in all cases in which the estate of a deceased contributory is being administered by him.

Imp. § 126.

**Contributories in case of insolvency. 122.** If any contributory becomes insolvent, either before or after he has been placed on the list of contributories, his estate shall be liable to the payment in due course of law of any moneys due from such insolvent in respect of his liability to contribute to the assets of the company being wound up.

Imp. § 127.

**Contributories in case of marriage. 123.** If any female contributory marries in community of goods, either before or after she has been placed on the list of contributories, her husband shall, during the continuance of the marriage, be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly.

Imp. § 128.

##### *Winding-up by the Court.*

**Circumstances under which company may be wound up by the Court. 124.** A company under this Ordinance may be wound up by the Court as hereinafter defined, under the following circumstances, that is to say: 1. Whenever the company has passed a special resolution requiring the company to be wound up by the Court; or 2. Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year; or 3. Whenever the members are reduced in number to less than seven; or 4. Whenever the company is unable to pay its debts; or 5. Whenever the Court is of opinion that it is just and equitable that the company should be wound up.

Imp. § 129.

**Company when deemed unable to pay its debts. 125.** A company under this Ordinance shall be deemed to be unable to pay its debts: 1. Whenever a creditor, by assignment or otherwise, to whom the company is indebted, in a sum exceeding two hundred and forty dollars then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due, and the company has, for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor; or 2. Whenever execution

or other process issued on a judgment, sentence, or order obtained in any Court in favour of any creditor, in any proceeding instituted by such creditor against the company is returned unsatisfied in whole or in part; or 3. Whenever it is proved, to the satisfaction of the Court, that the company is unable to pay its debts.

Imp. § 130.

**Mode of making application for winding-up. 126.** 1. Any application to the Court for the winding-up of a company under this Ordinance shall be by petition. 2. Such petition may be presented by the company, or by any one or more creditor or creditors, or contributory or contributories, of the company, or by all or any of the above parties, together or separately. Provided always that no contributory of a company under this Ordinance shall be capable of presenting a petition for winding up such company unless the members of the company are reduced in number to less than seven or unless the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him and registered in his name for a period of at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former holder; but where a share has during the whole or any part of the six months been held by or registered in the name of the wife of a contributory either before or after her marriage or by or in the name of any trustee or other person for such wife or for the contributory, such share shall for the purposes of this subsection be deemed to have been held by and registered in the name of the contributory. 4. Every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Imp. §§ 137, 138.

**Commencement of winding-up by the Court. 127.** A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Imp. § 139.

**Power to the Court to interdict, etc. 128.** 1. The Court may, at any time after the presentation of a petition for winding up a company under this Ordinance, and before making an order for winding up the company, on the application of the company or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceedings against the company, on such terms as the Court thinks fit. 2. The Court may also, at any time after the presentation of such petition, appoint provisionally the Administrator-General as official liquidator of the estate and effects of the company.

Imp. § 140.

**Course to be pursued by the Court on hearing petition. 129.** On hearing the petition the Court may dismiss the same, with or without costs, may adjourn the hearing, conditionally or unconditionally, and may make any interim order, or any other order that it deems just.

Imp. § 141.

**Stay of actions after order for winding-up. 130.** When an order has been made for winding up a company under this Ordinance no action, suit, or other proceeding shall be proceeded with or commenced against the company, except with the leave of the Court, and subject to such terms as the Court may impose.

Imp. § 142.

**Making of minute of winding-up. 131.** When an order has been made for winding up a company under this Ordinance, the Registrar shall make a minute thereof in his books relating to the company.

Imp. § 143.

**Power to the Court to stay proceedings. 132.** The Court may, at any time after an order has been made for winding up a company, on the application by motion of any creditor or contributory of the company, and on proof, to the satisfaction of the Court, that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Imp. § 144.

**Effect of order on share capital of company limited by guarantee. 133.** When an order has been made for winding up a company limited by guarantee and having a capital divided into shares, any share capital that may not have been called up



shall be deemed to be assets of the company, and to be a debt due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

**The Court may have regard to wishes of creditors or contributories.** 134. 1. The Court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. 2. In the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company.

Imp. § 145.

#### *Liquidators.*

**Provisions as to liquidator.** 135. 1. On an order being made by the Court for winding up a company the Administrator-General shall by virtue of his office become the provisional liquidator of the company, and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such. 2. When a person other than the Administrator-General is appointed liquidator of a company he shall be styled liquidator and not official liquidator of the company. Such a person shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the manner prescribed to the satisfaction of the Court. He shall give the Administrator-General such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Ordinance. 3. If any vacancy occurs in the office of liquidator of a company, the Administrator-General shall, by virtue of his office, be the liquidator during the vacancy. 4. The Administrator-General may be appointed by the Court provisional liquidator of the company at any time after the presentation of the petition and before a winding-up order has been made. 5. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company the Administrator-General may be so appointed.

Imp. §§ 149, 153, 162.

**Power to appoint special manager.** 136. 1. Where the Administrator-General becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court to, and the Court may on such application, appoint a special manager thereof during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court. 2. The special manager shall give such security and account in such manner as the Court may direct. 3. The special manager shall receive such remuneration as may be fixed by the Court.

Imp. § 161.

**Meetings of creditors.** 137. 1. When the Court has made an order for winding up a company the Administrator-General shall summon separate meetings of the creditors and contributories of the company for the purpose of: a. Determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Administrator General; and b) Determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of such committee if appointed. The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions the Court shall decide the difference and make such order thereon as the Court may think fit. 2. The provisions of the third Schedule to this Ordinance shall subject to such modifications as may be made therein by general rules, apply to any meeting summoned in pursuance of this section. 3. In case a liquidator is not appointed by the Court the Administrator-General shall be the liquidator of the company.

Imp. § 162.

**Statement of company's affairs. 138.** 1. Where the Court has made an order for winding up a company, there shall be made out and submitted to the Administrator-General a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of the assets, debts, and liabilities of the company, the names, residences, and occupations of the creditors of the company, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the Administrator-General may require. 2. The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company or having taken part in the formation of the company at any time within one year before the order for winding up the company as the Administrator-General, subject to the direction of the Court, may require to submit and verify the same. 3. The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the Administrator-General or the Court may for special reasons appoint. 4. Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Administrator-General, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of such statement and affidavit as the Administrator-General may consider reasonable, subject to an appeal to the Court. 5. If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty dollars for every day during which the default continues. 6. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court and shall be punishable accordingly on the application of the liquidator or of the Administrator-General.

Imp. § 147.

**Report on winding-up and proceedings thereupon. 139.** 1. Where the Court has made an order for winding-up a company, the Administrator-General shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the Court: a. As to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liability; and b) If the company has failed, as to the causes of the failure; and c) Whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof. 2. The Administrator-General may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court. 3. The Court may, after consideration of any such report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation of the company, or as to the conduct of the business of the company, or as to his conduct and dealings as director or officer of the company. 4. The Administrator-General shall take part in the examination and for that purpose may, if specially authorized by the Court in that behalf, employ a solicitor with or without counsel. 5. The liquidator, when the Administrator-General is not the liquidator, and any creditor or contributory of the company may also take part in the examination either personally or by solicitor or counsel. 6. The Court may put such questions to the person examined as to the Court may seem expedient. 7. The person examined shall be examined on oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. The person examined shall at his own cost prior to such examination, be furnished with a copy of the Administrator-General's report, and shall also at his own cost be entitled to employ at such examination a solicitor with or without counsel, who shall be at liberty to put such questions to the person examined as the Court may deem just for the purpose



of enabling that person to explain or qualify any answers given by him. Provided always, that if such person is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as the Court in its discretion may think fit. Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times. 8. The Court may, if it thinks fit, adjourn the examination from time to time. 9. A public examination under this section may, if the Court so directs, and subject to general rules, be held before the Registrar of British Guiana, and the powers of the Court under subsections six, seven, and eight of this section may (except as to costs) be exercised by him.

Imp. §§ 148, 175.

**Committee of inspection. 140.** 1. A committee of inspection appointed in pursuance of this Ordinance shall consist of persons being creditors or contributories of the company or persons holding general powers of attorney from such persons in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the Court. 2. The committee of inspection shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary. 3. The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting. 4. Any member of the committee may resign his office by notice in writing signed by him, and delivered to the liquidator. 5. If a member of the committee becomes insolvent, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members of the committee who together with himself represent the creditors or contributories as the case may be, his office shall thereupon become vacant. 6. Any member of the committee representing creditors may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting. Any member of the committee representing contributories may be removed by an ordinary resolution at any meeting of contributories, of which seven days' notice has been given stating the object of the meeting. 7. On a vacancy occurring in the office of a member of the committee, the liquidators shall forthwith summon a meeting of creditors or of contributories, as the case may require, for the purpose of filling the vacancy and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy. 8. The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body. 9. If there be no committee of inspection, any act or thing or any direction or permission by this Ordinance authorized or required to be done or given by the committee may be done or given by the Court on the application of the liquidator.

Imp. § 160.

**Banking account of liquidator. 141.** 1. Every liquidator of a company which is being wound up by the order of the Court shall keep a separate account with such bank as the Court may determine and shall, subject to the directions of the Court, pay all moneys received by him as such liquidator into the said bank to such account and make all payments therefrom. 2. If any such liquidator at any time retains in his hands for more than three days any sum exceeding such amount, if any, as the Court may have authorized him to retain, then unless he explains the retention to the satisfaction of the Court he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum and shall be liable to be removed from being liquidator and to pay any expenses occasioned by his default. 3. No liquidator of a company which is being wound up by order of the Court shall pay any sums received by him as liquidator into his private banking account.

Imp. § 154.

**Powers of liquidator. 142.** 1. The liquidator of a company which is being wound up by the Court may, with the sanction either of the Court or of the committee of inspection, carry on the business of the company, or bring or defend any legal proceeding in the name and on behalf of the company, or exercise any of the powers conferred by section 204 or section 205 of this Ordinance. 2. The liquidator of any

such company may, without the sanction of the Court or of the committee of inspection, exercise any of the other powers conferred on the liquidator by section 154 of this Ordinance. 3. The exercise by the liquidator of the powers referred to in this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers. 4. The liquidator of a company which is being wound up by order of the Court may, with the sanction either of the Court or of the committee of inspection, employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself. The sanction aforesaid must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

Imp. § 151.

**Delegation to liquidator of certain powers of Court. 143.** General rules may be made for requiring or enabling all or any of the powers and duties conferred and imposed on the Court by sections 134, 156, 157, 158, 160 and 165 of this Ordinance to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court. Provided that the liquidator shall not without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

Imp. § 173.

**Audit of liquidator's accounts. 144.** 1. Every liquidator of a company which is being wound up by order of the Court shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office send to the Registrar of the Court an account of his receipts and payments as such liquidator. 2. The account shall be in a prescribed form, and shall be verified by a statutory declaration in the prescribed form. 3. The accounts so sent shall be audited by the Accountant of Court and for the purpose of the audit, the liquidator shall furnish the accountant with such vouchers and information as the accountant may require, and the accountant may at any time require the production of and inspect any books or accounts kept by the liquidator. 4. When any such account has been audited it shall be filed with the Court and shall be open to the inspection of any creditor, or of any person interested. 5. The Registrar of the Court shall cause the account or a summary thereof when audited to be printed, and shall send a printed copy thereof by post to every creditor or contributory.

Imp. § 155.

**Books to be kept by liquidator. 145.** Every liquidator of a company which is being wound up by order of the Court shall keep in manner prescribed, proper books in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory of the company may, subject to the control of the Court, personally or by his agent inspect any such books.

Imp. § 156.

**Release of liquidator. 146.** 1. When the liquidator of a company which is being wound up by order of the Court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories between themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Court shall, on his application, cause a report on his accounts to be prepared by the accountant of Court, and on his complying with all the requirements of the accountant, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator and shall either grant or withhold the release accordingly. 2. Where the release of a liquidator is withheld the Court may on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default he may have done or made contrary to his duty. 3. An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact. 4. Where the liquidator has not



previously resigned or been removed, his release shall operate as a removal of him from his office.

Imp. § 157.

**Discretionary powers of liquidator and control thereof. 147.** 1. Subject to the provisions of this Ordinance the liquidator of a company which is being wound up by order of the Court, shall, in the administration of the property of the company and in the distribution thereof amongst its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection. 2. The liquidator may from time to time summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be. 3. The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding-up. 4. Subject to the provisions of this Ordinance, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

Imp. § 158.

**Appeal to Court against liquidator. 148.** If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up by order of the Court, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Imp. § 158.

**Control of Court over liquidator. 149.** 1. The Court shall take cognizance of the conduct of liquidators of companies which are being wound up by order of the Court, and in the event of any such liquidator not faithfully performing his duties and duly observing all the requirements imposed on him by statute, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Court by any creditor or contributory in regard thereto, the Court shall inquire into the matter, and take such action thereon as may be deemed expedient. 2. The Court may at any time require any liquidator of a company which is being wound up by order of the Court to answer any inquiry made by it in relation to any winding-up in which the liquidator is engaged, and may, if the Court think fit, examine on oath the liquidator or any other person concerning the winding-up. 3. The Court may also direct a local investigation to be made of the books and vouchers of the liquidator of any company which is being wound up by order of the Court

Imp. § 159.

**Meaning of winding-up by order of the Court. 150.** For the purposes of sections 136 to 150 (both inclusive) a company shall not be deemed to be wound up by order of the Court if the order is to continue a winding-up under the supervision of the Court.

Imp. § 203.

**Appointment of liquidator. 151.** 1. For the purpose of conducting the proceedings in winding up a company and assisting the Court therein there may be appointed a person or persons to be called a liquidator or liquidators, and the Court may appoint such person or persons, as it thinks fit, to the office of liquidator or liquidators. 2. In all cases, if more persons than one are appointed to the office of liquidator, the Court shall direct whether any act hereby required or authorized to be done by the liquidator is to be done by all or any one or more of such persons. 3. If the Administrator General is appointed or becomes liquidator in any case he shall be styled official liquidator, but the provisions hereinafter contained as to liquidators shall unless otherwise provided apply to the official liquidator though not specified therein.

Imp. § 149.

**Resignation, removal, filling up vacancy, and compensation. 152.** 1. Any liquidator other than the official liquidator may resign or any liquidator may be removed by the Court on due cause shown. 2. Any vacancy in the office of a liquidator appointed by the Court shall be filled by the Court. 3. There shall be paid to the liquidator (not being the official liquidator) such salary or remuneration by way of percentage or otherwise as the Court may direct; and if more liquidators than one such

liquidator are appointed, such remuneration shall be distributed amongst them in such proportions as the Court may direct.

Imp. § 149.

**Style and duties of liquidator. 153.** 1. The liquidator or liquidators shall be described by the style of the liquidator or official liquidator or of the liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names. 2. He or they shall take into his or their custody, or under his or their control, all the property, effects, and things in actions to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the Court.

Imp. § 149.

**Powers of liquidator with the sanction of the Court. 154.** Subject to the provisions of section 142 of this Ordinance the liquidator shall have power, with the sanction of the Court, to do the following things, that is to say: 1. To bring or defend any action, suit, or prosecution, or other legal proceeding, whether civil or criminal, in the name and on behalf of the company. 2. To carry on the business of the company, so far as may be necessary for the beneficial winding-up of the same. 3. To sell the moveable and immoveable property, effects, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels. 4. To do all acts and to execute, in the name and on behalf of the company, all transports, assignments, conveyances, receipts, and other documents, and for that purpose to use, when necessary, the company's seal. 5. To prove, rank, claim, and draw a dividend in the matter of the insolvency of any contributory for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance in the matter of bankruptcy or insolvency, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors. 6. To draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making, or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect, with respect to the liability of such company, as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf of such company in the course of carrying on the business thereof. 7. To do in his official name any act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act cannot conveniently be done in the name of the company; and in all cases where he uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to recover such moneys, be deemed to be due to the liquidator himself; and 8. To do and execute all such other things including the appointment of a solicitor to assist him in the performance of his duties as may be necessary for winding up the affairs of the company and distributing its assets.

Imp. § 151.

**Discretion of liquidator. 155.** The Court may provide by any order that the liquidator may exercise any of the above powers without the sanction or intervention of the Court.

Imp. § 151 (4).

#### *Ordinary powers of the Court.*

**Collection and application of assets. 156.** As soon as may be after making an order for winding up the company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Ordinance, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

Imp. § 163.

**Provisions as to representative contributories. 157.** 1. In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right, and persons who are contributories as being representatives of or being liable for the debts of others. 2. It shall not be necessary, where the heir of any deceased contributory is placed on the list, to add the executor or legatees of such contributory: Provided, nevertheless, that such executor or legatees may be added as and when the Court thinks fit.

Imp. § 163.



**Power to the Court to require delivery of property. 158.** The Court may, at any time after making an order for winding up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the liquidator, any sum or balance, books, papers, estate, or effects which may happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

Imp. § 164. See note to § 203, *infra*.

**Power to the Court to order payment of debts by contributory. 159.** The Court may, at any time after making an order for winding up the company, make an order on any contributory for the time being settled on the list of contributories directing payment to be made, in manner in the said order mentioned, of any moneys due from him, or from the estate of the person whom he represents, to the company, exclusive of any moneys which he, or the estate of the person whom he represents, may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Part; and it may, in making such order, when the company is not limited, allow to such contributory, by way of set-off, any moneys due to him, or to the estate which he represents, from the company, on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit: Provided that when all the creditors of any company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls.

Imp. § 165.

**Power to the Court to make calls. 160.** The Court may, at any time after making an order for winding up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Imp. § 166.

**Power to the Court to order payment into bank. 161.** The Court may order any contributory, purchaser, or other person from whom money is due to the company to pay the same into any bank to the account of the liquidator instead of to the liquidator, and such order may be enforced in the same manner as if it had directed payment to the liquidator.

Imp. § 167.

**Regulation of account with the Court. 162.** All moneys, bills, notes, and other securities paid and delivered into any bank in the event of a company being wound up by the Court shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out, of the same as the Court may direct.

Imp. § 167.

**Provision in case of representative contributory not paying moneys ordered. 163.** If any person made a contributory as heir or executor of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for compelling payment out of the estate of such deceased contributory of the moneys due.

**Effect of order made upon contributory. 164.** Any order made by the Court in pursuance of this Ordinance upon any contributory shall, subject to appeal to Her Majesty-in-Council, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatever.

Imp. § 168.

**Power to the Court to exclude creditors not proving within certain time. 165.** The Court may fix a certain day or certain days on or within which creditors of the com-

pany are to prove their debts or claims or to be excluded from the benefit of any distribution made before such debts are proved.

Imp. § 169.

**Adjustment of rights of contributories.** 166. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Imp. § 170.

**Costs of winding-up.** 167. The Court, may in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding-up any company in such order of priority as the Court thinks just.

Imp. § 171.

**Dissolution of company.** 168. 1. When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly. 2. On any order being so made, the Registrar shall make a minute accordingly in his books of the dissolution of such company.

Imp. § 172.

*Extraordinary powers of the Court.*

**Power to the Court to summon persons before it suspected of having property of company.** 169. 1. The Court may, after it has made an order for winding up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company or supposed to be indebted to the company or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company. 2. The Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company. 3. If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination: Provided nevertheless, that in any case where any person claims any lien on papers, deeds, writings, or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Imp. § 174. See note to § 203, *infra*.

**Examination of parties by the Court.** 170. The Court may examine upon oath either by word of mouth or on written interrogatories any person appearing or brought before it in manner aforesaid concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Imp. § 174.

**Power to arrest contributory about to abscond, or to remove or conceal any of his property.** 171. The Court may, at any time before or after it has made an order for winding up a company, on proof being given that there is probable cause for believing that any contributory to such company is about to quit the Colony or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or of avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

Imp. § 176.

**Powers of the Court cumulative.** 172. Any powers by this Ordinance conferred on the Court shall be deemed to be in addition to and not in restriction of any other powers subsisting of instituting proceedings against any contributory or the estate of any contributory, or against any debtor of the company, for the recovery of any call or other sums due from such contributory or debtor or his estate, and such proceedings may be instituted accordingly.

Imp. § 177.

*Swearing of affidavits.*

**Affidavits where and before whom same may be sworn.** 173. 1. Any affidavit required to be sworn under the provisions or for the purposes of Part IV. may be



lawfully sworn in the United Kingdom, or in any Colony, or place under the dominion of Her Majesty, before any Court, Judge, or person lawfully authorized to take and receive affidavits, or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's dominions. 2. All Courts, Judges, Magistrates, Justices, Commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such Court, Judge, person, consul, or vice-consul, attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Ordinance.

Imp. § 228.

*Appeal from order of the Court.*

**Enforcement of order, but subject to appeal. 174.** All orders made by the Court under this Ordinance may be enforced in the same manner in which orders of the Court made in any suit pending therein may be enforced; but any party feeling aggrieved by any order made, under the provisions of this or of any other Part, by any Judge sitting apart may, within fourteen days from the date of such order and on giving security for costs in appeal to the extent of fifty dollars, appeal from such order by petition to the Supreme Court of British Guiana, and the said Court may thereupon confirm, discharge, or vary such order in such manner as to it may seem meet.

Imp. §§ 178, 180, 181.

*Voluntary winding-up.*

**Circumstances under which company may be wound up voluntarily. 175.** 1. A company under this Ordinance may be wound up voluntarily under the following circumstances, that is to say: a) Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; or b) Whenever the company has passed a special resolution requiring the company to be wound up voluntarily; or c) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same. 2. For the purposes of this Ordinance, any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution, as hereinbefore defined.

Imp. § 182.

**Commencement of voluntary winding-up. 176.** A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up.

Imp. § 183

**Effect of voluntary winding-up on status of company. 177.** Whenever a company is wound up voluntarily, the company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding-up shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.

Imp. § 184.

**Publication of notice of resolution to wind up voluntarily. 178.** Notice of any special resolution or extraordinary resolution passed for winding up a company voluntarily shall be given by advertisement in the *Gazette*.

Imp. § 185.

**Consequences of voluntary winding up. 179.** The following consequences shall ensue upon the voluntary winding-up of a company, that is to say: 1. The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless it is otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company. 2. Liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property. 3. The company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator,

and may fix the remuneration to be paid to them or him. 4. If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him. 5. On the appointment of liquidators, all the power of the directors shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers. 6. When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two. 7. The liquidators may, without the sanction of the Court, exercise all powers by this Ordinance given to the official liquidator. 8. The liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company, and any list so settled shall be prima facie evidence of the liability of the persons named therein to be contributories. 9. The liquidators may, at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same; and 10. The liquidators shall pay the debts of the company, and adjust the rights of the contributories among themselves.

Imp. § 186.

**Effect of winding up on share capital of company limited by guarantee. 180.** Where a company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

**Power to company to delegate authority to appoint liquidators. 181.** A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may, by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised; and any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company.

Imp. § 190.

**Arrangement between company and creditors. 182.** 1. Any arrangement entered into between a company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned. 2. Any creditor or contributory of a company that has, in manner aforesaid entered into any arrangements with its creditors, may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Imp. § 191.

**Power to liquidators or contributories in voluntary winding-up to apply to the Court. 183.** Where a company is being wound up voluntarily, the liquidators or any contributory of the company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls or as respects any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court; and the Court, if it is satisfied that the determination of such question or the required exercise of power, will be just and beneficial, may accede, either wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order on such application as the Court thinks just.

Imp. § 193.



**Power to liquidators to call general meetings. 184.** 1. Where a company is being wound up voluntarily, the liquidators may from time to time, during the continuance of such winding-up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purposes they think fit. 2. In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.

Imp. § 194.

**Power to fill up vacancy among liquidators. 185.** If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation, or otherwise, the company in general meeting may, subject to any arrangement which it may have entered into with its creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the Court.

Imp. § 189.

**Power to the Court to appoint or remove liquidator. 186.** 1. If, from any cause whatever, there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator or liquidators. 2. The Court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up.

Imp. § 188.

**Making up of account by liquidators on conclusion of winding-up. 187.** 1. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators. 2. The meeting shall be called by advertisement, specifying the time, place, and object of such meeting; and such advertisement shall be published in the *Gazette* one month at least previously to the meeting. 3. The liquidators shall make a return to the Registrar of such meeting having been held and of the date at which the same was held, and, on the expiration of three months from the date of the registration of such return, the company shall be deemed to be dissolved. 4. If the liquidators make default in making such return to the Registrar they shall incur a penalty not exceeding twenty-four dollars for every day during which such default continues.

Imp. § 195.

**Costs of voluntary winding-up. 188.** All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

Imp. § 196.

**Saving of rights of creditors. 189.** The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Imp. § 197.

**Power to the Court to adopt proceedings of voluntary winding-up. 190.** Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Imp. § 198.

*Winding-up subject to supervision of the Court.*

**Power to the Court, on application, to direct winding up subject to supervision. 191.** Where a resolution has been passed by a company to wind up voluntarily, the

Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.

Imp. § 199.

**Petition for winding up subject to supervision. 192.** A petition, praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding up the company by the Court.

Imp. § 200.

**The Court may have regard to wishes of creditors or contributories. 193.** 1. The Court may, in determining whether a company is to be wound up altogether by the Court or subject to the supervision of the Court, in the appointment of a liquidator or liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors, or contributories, as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting and to report the result of such meeting to the Court. 2. In the case of creditors, regard shall be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company.

Imp. § 201.

**Power to the Court to appoint additional liquidators in winding-up subject to supervision. 194.** 1. Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company. 2. The Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Imp. § 202.

**Effect of order of the Court for winding-up subject to supervision. 195.** Where an order is made for a winding-up subject to the supervision of the Court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all their powers without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily; but, save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of action, suits, and other proceedings, be deemed to be an order of the Court for winding up the company by the Court and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if any order had been made for winding-up the company altogether by the Court; and in the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the liquidators conducting the winding-up by the Court the expression liquidators shall be deemed to mean the liquidators conducting the winding-up subject to the supervision of the Court.

Imp. § 203.

**Appointment in certain cases of voluntary liquidators to be liquidators in winding-up by Court. 196.** Where an order has been made for the winding-up of a company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the Court may, in such last-mentioned order or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be liquidators in the winding-up by the Court.

Imp. § 204.

**Power for Administrator General to apply as to voluntary winding-up. 197.** Where a company is being wound up voluntarily or subject to the supervision of the Court,



the Administrator-General may present a petition that the company be wound up by the Court, and thereupon, if the Court is satisfied that the voluntary winding-up or winding-up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories, it may make an order that the company be wound up by the Court.

*Supplemental provisions.*

**Avoidance of disposition of property after commencement of winding-up.** 198. Where any company is being wound up by the Court or subject to the supervision of the Court, all disposition of the property, effects, and things in action of the company, and every transfer of shares or alteration in the status of the members of the company, made between the commencement of the winding-up and the order for winding-up shall, unless the Court otherwise orders, be void.

Imp. § 205.

**Use of books of company as evidence in winding-up.** 199. Where any company is being wound up, all books, accounts, and documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Imp. § 220.

**Disposal of books, accounts, and documents of company wound-up.** 200. Where any company has been wound up under this Ordinance and is about to be dissolved, the books, accounts, and documents of the company and of the liquidators may be disposed of in the following way, that is to say, where the company has been wound up by or subject to the supervision of the Court, in such way as the Court directs, and where the company has been wound up voluntarily, in such way as the company, by an extraordinary resolution, directs; but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the company, or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same, or any of them, cannot be made forthcoming to any party or parties claiming to be interested therein.

Imp. § 222.

**Inspection of books during winding-up.** 201. Where an order has been made for winding-up a company by the Court, or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

Imp. § 221.

**Powers of assignee of thing in action.** 202. Any person to whom any thing in action or rights of action belonging to the company is assigned, in pursuance of this Ordinance, may bring or defend any action or suit relating to such thing in action or right of action in his own name.

**Admissibility to proof of debts and claims of all descriptions.** 203. In the event of any company being wound up under this Ordinance, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as may be possible, of the value of all such debts or claims as are subject to any contingency or sound only in damages, or for some other reason do not bear a certain value, provided that in winding up any company under this Ordinance whose assets are proved to be insufficient to pay its debts and liabilities and the cost of the winding-up the same provisions shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to the debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively and as to the ranking and payment of all debts and liabilities as may be in force for the time being under the law of insolvency, with respect to the estates of persons adjudged insolvent; and all persons who, in any such case, would be entitled to prove for and receive dividends out of the assets of any such company, if such assets were sufficient to pay its debts and liabilities may come in under the winding-up of such company and make such claim against the same as they may respectively be entitled to.

Imp. § 206. A creditor proving his claim as an unsecured creditor thereby relinquishes his security, and may be compelled to turn over such security to the liquidator. — *In re Companies Ordinance, 1898, (12th February, 1901).* See also *In re Winter Gold Mine, Ltd., (26th April, 1901).*

**Payment of creditors in winding-up. 204.** The liquidators may, with the sanction either of the Court, or of the committee of inspection where the company is being wound up by the Court or with the sanction of the Court where the company is being wound up subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with the creditors or persons claiming to be creditors or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

Imp. § 214.

**Power to make compromises, etc., with creditors, etc. 205.** The liquidators may, with the sanction either of the Court, or of the committee of inspection where the company is being wound up by the Court or with the sanction of the Court where the company is being wound up subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding-up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon, and with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Imp. § 214.

**Where compromise proposed Court may order a meeting of creditors, etc., to decide as to such compromise. 206.** Where any compromise or arrangement is proposed between a company which is being wound up by the Court or subject to the supervision of the Court or altogether voluntarily, and the creditors of such company or any class of such creditors, it shall be lawful for the Court on the application in a summary way of any creditor or of the liquidators, to order that a meeting of such creditors or class of creditors, shall be summoned in such manner as the Court may direct; and if a majority in number representing three-fourths in value of such creditors or class of creditors, present either in person or by proxy at such meeting, shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidators and contributories of the company.

Imp. § 214.

**Power to liquidators to accept shares, etc., as consideration for sale of property of company. 207.** 1. Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first-mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale, shares, policies, or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company. 2. Any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member, at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators, or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the



liquidators to do one of the following things as the liquidators may prefer; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution. 3. No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if an order is made within a year for winding up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court. 4. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration; and for the purposes of such arbitration the provisions of the *Companies' Clauses and Powers Consolidation Ordinance, 1846*, with respect to the settlement of disputes by arbitration shall be incorporated with this Ordinance, and, in the construction of such provisions, this Ordinance shall be deemed to be the special Ordinance, and "the promoters of the undertaking" shall mean the company that is being wound up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators, if more than one.

Imp. § 192.

**Avoidance of attachment, etc., after commencement of winding-up. 208.** Where any company is being wound up by the Court or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put into force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents.

Imp. § 211.

**Fraudulent preference. 209.** 1. Any such transfer, assignment, delivery of goods, payment, or other act relating to property as would, if made or done by or against any individual be deemed, in the event of his insolvency, to have been made or done by way of undue or fraudulent preference of the creditors of such person shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Ordinance, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly. 2. For the purposes of this section the presentation of a petition for winding up a company, shall, in the case of a company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding-up the company shall in the case of a voluntary winding-up be deemed to correspond with the act of insolvency in the case of an individual. 3. Any conveyance or assignment made by any company formed under this Ordinance of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

Imp. § 210.

**Power of Court to assess damages against delinquent directors, officers, and promoters. 210.** 1. Where in the course of the winding-up of a company under this Ordinance it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the Administrator-General, or of the liquidator of the company or of any creditor or contributory of the company examine into the conduct of such promoter, director, manager, liquidator, or other officer of the company, and compel him to repay any moneys or restore any property so misapplied, or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the Court thinks just. 2. The provisions of this section shall apply in the winding-up of any company under this Ordinance whether the same is being wound up by or subject to the supervision of the Court or is being wound up voluntarily, and whether the winding-up commenced before or after the passing of this Ordinance and

notwithstanding that the offence is one for which the offender may be criminally responsible.

Imp. § 215.

**Effect of order under preceding section. 211.** An order for payment of money made by the Court under the last preceding section of this Ordinance shall be deemed to be a final judgment within the meaning of paragraph f. of sub section 1 of section 3 of the *Insolvency Ordinance, 1884*.

Imp. § 215.

**Punishment of person destroying, etc., books. 212.** If any director, officer, or contributory of any company wound up under this Ordinance destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanour, and, being convicted thereof before the Supreme Court shall be liable to imprisonment, with or without hard labour, for any term not exceeding two years.

Imp. § 216.

**Prosecution of delinquent director, etc., in case of winding-up. 213.** 1. Where any order is made for winding up a company by the Court or subject to the supervision of the Court, if it appears in the course of such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in such winding-up or its own motion direct the official liquidator or the liquidators (as the case may be) to institute and conduct a prosecution for such offence or proceedings for a preliminary investigation (as the case may be) and may order the costs and expenses to be paid out of the assets of the company. 2. Where a company is being wound up altogether voluntarily, if it appears to the liquidators conducting such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the Court, to prosecute such offender or to institute and carry on proceedings for the preliminary investigation of the charge against such offender, and all expenses properly incurred by them in so doing shall be payable out of the assets of the company in priority to all other liabilities.

Imp. § 217.

**Punishment of person giving false evidence. 214.** If any person, on any examination upon oath or affirmation authorized under this Ordinance or in any affidavit, deposition, or solemn affirmation in or about the winding-up of any company under this Ordinance, or otherwise in or about any matter arising under this Ordinance, wilfully and corruptly gives false evidence, he shall, on being convicted, be liable to the penalties of wilful perjury.

Imp. § 218.

**Priority of debts. 215.** 1. All debts entitled to priority over other debts shall rank equally among themselves, and shall be paid in full unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions among themselves. 2. Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the liquidators or official liquidators shall discharge the foregoing debts forthwith, so far as the assets of the company are and will be sufficient to meet them, as and when such assets come into the hands of such liquidators or official liquidators.

Imp. § 209.

**Information as to pending liquidations. 216.** 1. If the winding-up of a company is not concluded within one year after its commencement, the liquidator of the company shall at such intervals as may be prescribed, until the winding-up is concluded send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the Ad-



ministrator General. 2. If a liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding two hundred and fifty dollars for each day during which the default continues. 3. If it appears from any such statement or otherwise that any liquidator of a company has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Receiver-General, and the receipt of the Receiver-General shall be an effectual discharge to such liquidator in respect of the moneys so paid. 4. For the purpose of ascertaining whether any money is payable to the Receiver-General under this section, the Court may at any time order any liquidator to submit an account verified by affidavit of all sums received and paid by him as liquidator and may direct the Accountant of the Court to audit such account and may require the liquidator to attend and produce all documents or other evidence in his possession necessary for such audit, and may order the liquidator to pay to the Receiver-General any sum which on making such audit appears payable to him under this section. 5. Any liquidator who fails to comply with any such order shall be deemed guilty of contempt of court and be punishable accordingly. 6. Any person claiming to be entitled to any money paid to the Receiver-General in pursuance of this section may apply to the Governor-in-Council for payment of the same and the Governor-in-Council may on a certificate by the liquidator that the person claiming is entitled make an order for the payment to that person of the sum due. Any person dissatisfied with the decision of the Governor-in-Council in respect of any claim made under this section may appeal to the Supreme Court.

Imp. § 224.

*Striking company off register.*

**Power of Registrar to strike names of defunct companies off register.**

**217.** 1. Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company, by post or otherwise, a letter inquiring whether the company is carrying on business or in operation. 2. If the Registrar does not within one month of sending the letter, receive any answer thereto, he shall, within fourteen days after the expiration of the month, send to the company by post or otherwise, a registered letter referring to the first letter, and stating that no answer thereto has been received by him, and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register. 3. If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter, receive any answer thereto the Registrar may publish in the *Gazette* and send to the company a notice that, at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary be struck off the register, and the company will be dissolved. 4. At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by such company, strike the name of such company off the register, and shall publish notice thereof in the *Gazette*; and on the publication of such last mentioned notice, the company whose name is so struck off shall be dissolved; provided that the liability if any, of every director, managing, officer and member of the company shall continue and may be enforced as if the company had not been dissolved. 5. If any company or any member thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member may apply to the Court, and the Court may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation, and that it is just so to do, order the name of the company to be restored to the register and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may, by such order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had never been struck off. 6. A letter or notice authorized or required for the purposes of this section to be sent to a company may be sent by post addressed to the company at its registered office, or if no office has been registered, addressed to the care of some director or officer of the company, or if there is no director or officer of the company whose name and address are known to the Registrar, the letter or notice in identical form may be

sent to each of the persons who subscribed the memorandum of association addressed to him at the address mentioned in that memorandum. 7. In the execution of his duties under this section, the Registrar shall conform to any regulations or directions which may be from time to time made or given by the Governor-in-Council.

Imp. § 242.

#### *Making of rules.*

**Power to the Court, or any two Judges thereof, to make rules. 218.** The Supreme Court of British Guiana or any two of the Judges thereof may, as often as circumstances require, make such rules for regulating appeals from orders made by a single Judge and concerning the mode of proceeding to be had for winding up a company in the Court and concerning all matters in which jurisdiction is by this Ordinance given to the Court as may from time to time seem necessary, but no such rules shall take effect until they have been laid before the Governor and Court of Policy and approved of and, until such rules are made and take effect, the general practice of the Court shall, so far as the same is applicable and not inconsistent with this Ordinance, apply to all appeals and proceedings for winding up a company under this Ordinance.

Imp. § 237.

### *Part V. The Registration Office.*

**Constitution of Registration Office. 219.** The registration of companies under this Ordinance shall be conducted as follows, that is to say: 1. The Registrar of British Guiana shall, without any further or other appointment, act as and be the Registrar of Joint Stock Companies under this Ordinance for the Colony. 2. No company shall be registered except at the Registrar's Office in the county in which, by the memorandum of association, the registered office of the company is declared to be established. 3. Every person may inspect the documents kept by the Registrar, and there shall be paid for such inspection a fee of one dollar for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar, and there shall be paid for such certificate of incorporation, certified copy, or extract a fee of one dollar for the certificate of incorporation and twenty-five cents for each folio of such copy or extract; and 4. Whenever any act is herein directed to be done by the Registrar, such act may be done by any sworn clerk and notary public or by any assistant sworn clerk in his office.

Imp. §§ 243, 244.

### *Part VI. Application of Ordinance to Companies Registered under the Companies Ordinance, 1864.*

**Former companies. 220.** Subject as hereinafter mentioned, this Ordinance shall apply to companies formed and registered under the *Companies Ordinance, 1864*, in the same manner in the case of a limited company, as if such company had been formed and registered under this Ordinance as a company limited by shares, or guarantee (as the case may be, and in the case of a company other than a limited company) as if such company had been formed and registered as an unlimited company under this Ordinance, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the *Companies Ordinance, 1864*.

Imp. § 245.

**Application of Ordinance to companies registered under the said Ordinance. 221.** This Ordinance shall apply to companies registered but not formed under the *Companies Ordinance, 1864*, in the same manner as it is hereinafter declared to apply to companies registered but not formed under this Ordinance, with this qualification that wherever reference is made expressly or impliedly to the date of registration such date shall be deemed to refer to the date at which such companies were respectively registered under the *Companies Ordinance, 1864*.

Imp. §§ 246, 247.

**Mode of transferring shares. 222.** Any company registered under the *Companies Ordinance, 1864*, may cause its shares to be transferred in manner hitherto in use or in such other manner as the company may direct.

Imp. § 248.



*Part VII. Companies Authorized to Register, and Re-register.*

**Regulations as to registration of existing companies. 223.** 1. The following regulations shall be observed with respect to the registration of companies under this Part, that is to say; a) No company having the liability of its members limited by Ordinance, or by Act of Parliament, or by Letters Patent, and not being a joint stock company as hereinafter defined, and no banking company shall register under this Ordinance in pursuance of this Part; b) No company having the liability of its members limited by Ordinance, or by Act of Parliament, or by Letters Patent shall register under this Ordinance in pursuance of this Part as an unlimited company or as a company limited by guarantee; c) No company that is not a joint stock company as hereinafter defined shall, in pursuance of this Part, register under this Ordinance as a company limited by shares; d) No company shall register under this Ordinance in pursuance of this Part unless an assent to its so registering is given by a majority of such of its member as may be present, either personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose; e) Where a company not having the liability of its members limited by Ordinance, or by Act of Parliament, or by Letters Patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, either personally or by proxy, at such last-mentioned general meeting; and f) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount. 2. In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member.

Imp. § 249.

**Companies capable of being registered. 224.** With the above exceptions, and subject to the foregoing regulations, every company existing at the commencement of this Ordinance including any company registered under the *Companies Ordinance 1864*, consisting of seven or more members, and any company hereafter formed in pursuance of any Ordinance other than this Ordinance, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Ordinance as an unlimited company, or a company limited by shares, or a company limited by guarantee, and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

Imp. § 249.

**Definition of "joint stock company." 225.** For the purposes of this Part, so far as the same relates to the description of companies empowered to register as companies limited by shares, a joint stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital or the holders of such stock, and no other persons, and such company, when registered with limited liability under this Ordinance, shall be deemed to be a company limited by shares.

Imp. § 250.

**Requirements for registration of joint stock company. 226.** Previously to the registration in pursuance of this Part of any joint stock company, there shall be delivered to the Registrar the following documents, that is to say: 1. A list showing the names, addresses, and occupations of all persons who, on a day named in such list and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number. 2. A copy of any Act of Parliament, Letters Patent, Ordinance, deed of settlement,

contract of co-partnery, or other instrument constituting or regulating the company; and 3. If any joint stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars, that is to say: a) The nominal capital of the company and the number of shares into which it is divided; b) The number of shares taken and the amount paid on each share; c) The name of the company, with the addition of the word "limited" as the last word thereof; and d) With the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee.

Imp. § 252.

**Requirements for registration of company not being a joint stock company.** 227. Previously to this registration in pursuance of this Part of any company not being a joint stock company, there shall be delivered to the Registrar a list showing the names, addresses, and occupations of the directors or other managers, if any, of the company, also a copy of any Ordinance, deed of settlement, contract of co-partnery, or other instrument constituting or regulating the company, with the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of guarantee.

Imp. § 253.

**Powers for existing company to register amount of stock instead of shares.** 228. Where a joint stock company authorized to register under this Ordinance has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

**Authentication of statements of existing company.** 229. The lists of members and directors and any other particulars relating to the company hereby required to be delivered to the Registrar shall be verified by an affidavit of the directors of the company delivering the same or any two of them, or of any two other principal officers of the company.

Imp. § 254.

**Power to the Registrar to require evidence as to nature of company.** 230. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or is not a joint stock company as hereinbefore defined.

Imp. § 255.

**Exemption of certain companies from payment of fees.** 231. No fees shall be charged in respect of the registration in pursuance of this Part of any company in cases where such company is not registered as a limited company, or where, previously to its being registered as a limited company, the liability of the shareholders was limited by some other Ordinance.

Imp. § 257.

**Power to company to change name.** 232. Any company authorized by this Part to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name, by adding thereto the word "limited."

Imp. § 258.

**Certificate of registration of existing company.** 233. On compliance with the requirements contained in this Part with respect to registration, and on payment of such fees, if any, as are payable under the Tables marked B and C in the first Schedule to this Ordinance, the Registrar shall certify, under his hand, that the company so applying for registration is incorporated as a company under this Ordinance, and, in the case of a limited company, that it is limited, and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands: Provided always that where by any Ordinance incorporating a company, the term or duration of succession is limited, such succession shall continue so limited, notwithstanding the company may be registered under this Ordinance.

Imp. § 259.

**Effect of certificate as evidence of compliance with the Ordinance.** 234. A certificate of incorporation given at any time to any company registered in pursuance



of this Part shall be conclusive evidence that all the requirements herein contained in respect of registration under this Ordinance have been complied with, and that the company is authorized to be registered under this Ordinance as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Ordinance.

**Transfer of property to company. 235.** All such property, moveable, and immoveable, including all interests and rights in, to, and out of property, moveable and immoveable, and including obligations and things in action, as may belong to or be vested in the company at the date of its registration under this Ordinance, shall, on registration, pass to and vest in the company as incorporated under this Ordinance, for all the estate and interest of the company therein.

Imp. § 260.

**Saving of obligations incurred previously to registration. 236.** The registration in pursuance of this Part of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of such company previously to such registration.

Imp. § 261.

**Continuation of existing actions and suits. 237.** All such actions, suits, and other legal proceedings as may, at the time of the registration of any company registered in pursuance of this Part, have been commenced by or against such company, or any member thereof, may be continued in the same manner as if such registration had not taken place: Provided, nevertheless, that execution shall not issue against the effects of any individual member of such company, upon any judgment, sentence, or order obtained in any action, suit, or proceedings so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, sentence, or order, an order may be obtained for winding up the company.

Imp. § 262.

**Effect of registration under Part VII. 238.** When a company is registered under this Ordinance in pursuance of this Part, all provisions contained in any Act of Parliament, Letters Patent, Ordinance, deed of settlement, contract of co-partnery, or other instrument constituting or regulating the company including in the case of a company registered as a company limited by guarantee the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Ordinance shall apply to such company and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Ordinance, subject to the provisions following, that is to say: 1. The Table marked A in the first Schedule to this Ordinance shall not, unless adopted by special resolution, apply to any company registered under this Ordinance in pursuance of this Part. 2. The provisions of this Ordinance relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered. 3. No company shall have power to alter any provision contained in any Act of Parliament, Letters Patent, or Ordinance relating to the company. 4. In the event of the company being wound up, every person shall be a contributory in respect of the debts and liabilities of the company contracted prior to registration, who is legally liable to pay or contribute to the payment of any debt or liability of the company contracted prior to registration or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid; and, in the event of the death or insolvency of any such contributory as last aforesaid or the marriage of any such contributory being a female, the provisions hereinbefore contained with respect to the heirs and executors of deceased contributories, and with respect to the assignees of insolvent contributories and to the husbands of married contributories, shall apply; and 5. Nothing herein contained shall authorize any company to alter any such

provisions contained in any deed of settlement, contract of co-partnery. Letters Patent or other instrument constituting or regulating the company, as would, if such company had originally been formed under this Ordinance, have been contained in the memorandum of association, and are not authorized to be altered by this Ordinance: Provided that nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Ordinance in pursuance of this Part thereof, by virtue of any Act of Parliament, Letters Patent, Ordinance, deed of settlement, contract of co-partnery, or other instrument constituting or regulating the company.

Imp. § 263.

**Power to the Court to restrain further proceedings. 239.** The Court may, at any time after the presentation of a petition for winding up a company registered in pursuance of this Part, and before making an order for winding up the company, on the application by motion of any creditor of the company, restrain further proceedings in any action, suit, or legal proceeding against any contributory of the company, as well as against the company as hereinbefore provided, upon such terms as the Court thinks fit.

Imp. § 265.

**Order for winding up company. 240.** Where an order has been made for winding up a company registered in pursuance of this Part, in addition to the provisions hereinbefore contained, it is hereby further provided that no action, suit, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose.

Imp. § 266.

**Re-registration of registered companies. 241.** 1. Any company registered under this Ordinance or any Ordinance hereby repealed as an unlimited company may re-register hereunder as a limited company or any company so registered as a limited company may re-register hereunder. 2. The registration of an unlimited company as a limited company under this section shall not affect or prejudice any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of such company prior to such registration and such debts, liabilities, contracts, and obligations may be enforced in manner provided by the preceding sections of this Part of this Ordinance in the case of a company registering in pursuance of those sections. 3. On the registration in pursuance of this section of a company which has been already registered, the Registrar shall make provision for closing the former registration of the company and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but save as aforesaid the registration of such a company shall take place in the same manner and have the same effect as if it were the first registration of that company under this Ordinance and as if the provisions of the Ordinance under which the company was previously registered and regulated had been contained in a different Ordinance from the Ordinance under which the company is registered as a limited company. 4. A company authorized to register under this section may register thereunder and avail itself of the privileges conferred by section fifty-nine notwithstanding any provisions contained in any Act of Parliament, Ordinance, Royal Charter, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company.

### *Part VIII. Application of the Ordinance to Unregistered Companies.*

**Winding up of unregistered company. 242.** Subject as hereinafter mentioned, any partnership, association, or company, except railway companies incorporated by Ordinance, consisting of more than seven members and not registered under this Ordinance, and hereinafter included under the term "unregistered company," may be wound up under this Ordinance, and all the provisions of this Ordinance with respect to winding-up shall apply to such company, with the following exceptions and additions, that is to say: 1. An unregistered company shall be deemed to be registered in that county of the Colony where its principal place of business is situate, or, if it has a principal place of business situate in more than one county of the Colony, then in each county of the Colony where it has a principal place of business; moreover, the principal place of business of an unregistered company, or (where it has a principal place of business situate in more than one county of the Colony)



such one of its principal places of business as is situate in that county of the Colony at the Registrar's Office of which proceedings are being instituted, shall, for all the purposes of the winding-up of such company, be deemed to be the registered office of the company; 2. No unregistered company shall be wound up under this Ordinance voluntarily or subject to the supervision of the Court; 3. The circumstances under which an unregistered company may be wound up are as follows, that is to say: a) Whenever the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs; b) Whenever the company is unable to pay its debts; c) Whenever the Court is of opinion that it is just and equitable that the company should be wound up; and 4. An unregistered company shall, for the purposes of this Ordinance, be deemed to be unable to pay its debts: a) Whenever a creditor to whom the company is indebted, by assignment or otherwise, in a sum exceeding two hundred and forty dollars then due, has served on the company, by leaving the same at the principal place of business of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor; b) Whenever any action, suit, or other proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company or from him in his character of member of the company, and notice in writing of the institution of such action, suit, or other legal proceeding having been served upon the company, by leaving the same at the principal place of business of the company, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not, within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other legal proceeding, to be stayed or indemnified the defendant, to his reasonable satisfaction against such action, suit, or other legal proceeding and against all costs, damages, and expenses to be incurred by him by reason of the same; c) Whenever execution or other process issued on a judgment, sentence, or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the company or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied; and d) Whenever it is otherwise proved to the satisfaction of the Court, that the company is unable to pay its debts.

Imp. § 268.

**Contributories in event of company being wound up. 243.** In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is legally liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company, and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid; but, in the event of the death or insolvency of any contributory, or the marriage of any female contributory, the provisions hereinbefore contained with respect to the heirs, executors, and legatees of a deceased contributory, and to the assignees of an insolvent contributory, and to the husband of a married contributory, shall apply.

Imp. § 269.

**Power to the Court to restrain further proceedings. 244.** The Court may, at any time after the presentation of a petition for winding up an unregistered company and before making an order for winding up the company, on the application of any creditor of the company, restrain further proceedings in any action, suit, or other proceeding against any contributory of the company, or against the company, as hereinbefore provided, upon such terms as the Court thinks fit.

Imp. § 270.

**Effect of order for winding up company. 245.** Where an order has been made for winding up an unregistered company, in addition to the provisions hereinbefore contained in the case of companies formed under this Ordinance, it is hereby further

provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court and subject to such terms as the Court may impose.

Imp. § 271.

**Provision in case of unregistered company. 246.** If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the order made for winding up such company or by any subsequent order, direct that all such property, moveable and immoveable, including all interests, claims, and rights into and out of property, moveable and immoveable, and including things in action, as may belong to or be vested in the company, or to or in any person or persons on trust for or on behalf of the company, or any part of such property, is to vest in the liquidator or liquidators by his or their official name or names, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the liquidator or liquidators may, in his or their official name or names, or in such name or names and after giving such indemnity as the Court directs, bring or defend any actions, suits, or other legal proceedings relating to any property vested in him or them, or any actions, suits, or other legal proceedings necessary to be brought or defended for the purpose of effectually winding up the company and recovering the property thereof.

Imp. § 272.

**Provisions of Part VII cumulative. 247.** The provisions made by this Part with respect to unregistered companies shall be deemed to be made in addition to, and not in restriction of, any provisions hereinbefore contained with respect to winding up companies by the Court: and the Court or liquidator or liquidators may, in addition to anything contained in this Part, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him or them in winding up companies formed under this Ordinance; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Ordinance, and then only to the extent provided by this Part.

Imp. § 273.

### *Part IX. Repeal and Special Provisions.*

**Repeal. 248.** The *Companies Ordinance, 1864*, is hereby repealed: Provided always (that in addition to the savings and limitations annexed to the repeal of an Ordinance by the *Interpretation Ordinance, 1891*) this repeal shall not affect the incorporation of any company registered under the Ordinance hereby repealed.

Imp. § 286.

**Saving of existing proceedings for winding up. 249.** Where previously to the commencement of this Ordinance an order has been made for winding up a company under the Ordinance hereby repealed, or a resolution has been passed for winding up a company voluntarily, the winding-up of such company shall be continued under this Ordinance subject to any express provisions of such Ordinance which are not enacted herein and for the purposes of such winding-up such repealed Ordinance shall be deemed to remain in full force.

Imp. § 287.

**Saving of conveyances, deeds, etc. 250.** Where previously to the commencement of this Ordinance any conveyance, mortgage, or other deed or instrument in writing has been made in pursuance of the Ordinance hereby repealed, such deed or instrument shall be of the same force as if this Ordinance had not passed, and for the purposes of such deed or instrument such repealed Ordinance shall be deemed to remain in full force.

Imp. § 288.

### *Schedules.*

#### *The First Schedule.*

##### **Table A. Regulations for Management of a Company limited by Shares.**

###### *Shares.*

1. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

2. Every member shall, on payment of twenty-four cents or such less sum as the company in general meeting may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him and the amount paid up thereon.



3. If such certificate is worn out or lost, it may be renewed on payment of twenty-four cents or such less sum as the company in general meeting may prescribe.

*Calls on shares.*

4. The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

5. A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

6. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same, at the rate of six pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

7. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

*Transfer of shares.*

8. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

9. Shares in the company shall be transferred in the following form:

I, A.B., of \_\_\_\_\_ in consideration of the sum of \_\_\_\_\_ dollars paid to me by C.D., of \_\_\_\_\_ do hereby transfer to the said C.D. the share (or shares) numbered \_\_\_\_\_ standing in my name in the books of the \_\_\_\_\_ company, to hold unto the said C.D., his heirs, executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I, the said C.D., do hereby agree to take the said share (or shares) subject to the same conditions.

As witness our hands, this \_\_\_\_\_ day of \_\_\_\_\_ 1 \_\_\_\_\_

10. The company may decline to register any transfer of shares made by a member who is indebted to it.

11. The transfer book shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

*Transmission of shares.*

12. The heirs, executors, or administrators of a deceased member shall be the only persons recognized by the company as having any title to his share.

13. Any person acquiring a vested interest in and becoming entitled to dispose of a share in consequence of the death or insolvency of any member, or in consequence of the marriage of any member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

14. Any person who has acquired a vested interest in, or who has become entitled to dispose of a share in consequence of the death or insolvency of any member, or in consequence of the marriage of any member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

15. The person so acquiring such interest, and becoming entitled as aforesaid, shall testify such election by executing to his nominee an instrument of transfer of such share.

16. The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

*Forfeiture of shares.*

17. If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with the interest and expenses that may have accrued by reason of such non-payment.

18. The notice shall name a further day, on or before which such call, and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). The notice shall also state that, in the event of non-payment, at or before the time and at the place appointed, the share in respect of which such call was made will be liable to be forfeited.

19. If the requirements of such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited, by a resolution of the directors to that effect.

20. Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

21. Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of forfeiture.

22. An affidavit that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such shares, and such affidavit and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

*Conversion of shares into stock.*

23. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

24. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

25. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock; and such interest shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

*Increase in capital.*

26. The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

27. Subject to any direction to the contrary that may be given by the meeting which sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

28. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with respect to the payment of calls and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

*General meetings.*

29. The first general meeting shall be held at such time, not being more than four months after the registration of the company, and at such place, as the directors may determine.

30. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

31. The above mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

32. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

33. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

34. On the receipt of such requisition, the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

*Proceedings at general meetings.*

35. Seven days' notice at least, specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in



manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

36. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, the balance sheet, and the ordinary report of the directors.

37. No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows, that is to say: if the persons who have taken shares in the company and are in the Colony at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members; with this limitation that no quorum shall in any case exceed fifteen.

38. If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved: in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*.

39. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

40. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the appointed time for holding the meeting, the members present shall choose some one of their number to be chairman.

41. The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

42. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

43. If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

#### *Votes of members.*

44. Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

45. If any member is a lunatic or idiot, he may vote by his curator.

46. If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

47. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he purposes to vote.

48. Votes may be given either personally or by proxy.

49. The instrument appointing a proxy shall be in writing, under the hand of the appointer, or if such appointer is a corporation, under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the company.

50. The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

51. Any instrument appointing a proxy shall be in the following form:

#### Company, Limited.

I, \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_ being a member of the  
Company, Limited, and entitled to \_\_\_\_\_ vote (or \_\_\_\_\_ votes), hereby appoint  
of \_\_\_\_\_ as my proxy, to vote for me and on my behalf at the ordinary (or extraordinary,  
as the case may be) general meeting of the company to be held on the \_\_\_\_\_ day of  
1 \_\_\_\_\_, and at any adjournment thereof (or at any meeting of the company that may be held  
in the year \_\_\_\_\_).

As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_ 1 \_\_\_\_\_  
Signed by the said \_\_\_\_\_ in the presence of \_\_\_\_\_

*Directors.*

52. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

53. Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

54. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

*Powers of directors.*

55. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the Companies Ordinance, 1898, or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulations of these articles, to the provisions of the said Ordinance, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors, which would have been valid if such regulation had not been made.

56. The continuing directors may act, notwithstanding any vacancy in their body.

*Disqualification of directors.*

57. The office of director shall be vacated: 1. If he holds any other office or place of profit under the company; or 2. If he becomes insolvent; or 3. If he is concerned in, or participates in, the profits of, any contract with the company; but the above rules shall be subject to the following exceptions, namely, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for, the company of which he is director; nevertheless, he shall not vote in respect of such contract or work, and if he does so vote his vote shall not be counted.

*Rotation of directors.*

58. At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office, and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

59. The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company, shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year the one-third or other nearest number who have been longest in office shall retire.

60. A retiring director shall be re-eligible.

61. The company at the general meeting at which any directors retire, in manner aforesaid, shall fill up the vacated offices by electing a like number of persons.

62. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

63. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

64. Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

65. The company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may, by an ordinary resolution, appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

*Proceedings of directors.*

66. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

67. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

68. The directors may delegate any of their powers to committees, consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise



of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

69. A committee may elect a chairman at their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

70. A committee may meet and adjourn as they think proper. Questions arising at a meeting shall be determined by a majority of votes of the members present; and, in case of an equality of votes, the chairman shall have a second or casting vote.

71. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

#### *Dividends.*

72. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

73. No dividend shall be payable except out of the profits arising from the business of the company.

74. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserved fund to meet contingencies or for equalizing dividends or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

75. The directors may deduct from the dividends payable to any member all such sums of moneys as may be due from him to the company on account of calls or otherwise.

76. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

77. No dividend shall bear interest as against the company.

#### *Accounts.*

78. The directors shall cause true accounts to be kept: 1. Of the stock-in-trade and other assets of the company; 2. Of the sums of money received and expended by the company, and the matters in respect of which such receipt and expenditure take place; and 3. Of the credits and liabilities of the company. The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

79. Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure of the company for the past year, made up to a date not more than three months before such meeting.

80. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters; every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

81. A balance sheet shall be made out in every year, and laid before the company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this Table, or as near thereto as circumstances admit.

82. A printed copy of such balance sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

#### *Audit.*

83. Once at the least in every year the accounts of the company shall be examined, and the correctness of the balance sheet ascertained by one or more auditor or auditors.

84. The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the company in general meeting.

85. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

86. The auditors may be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.

87. The election of auditors shall be made by the company at its ordinary meeting in each year.

88. The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

89. Any auditor shall be re-eligible on his quitting office.

90. If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

91. If no election of auditors is made in manner aforesaid, the Governor in Council may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

92. Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

93. Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company. He may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the company.

94. The auditors shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

#### Notices.

95. A notice may be served by the company upon any member either personally, or by leaving it at his registered place of abode, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode, if such place of abode is within a postal district.

96. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such shares.

97. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the Post Office.

**Table B. Table of Fees to be paid to the Registrar of Joint Stock Companies by a Company having a Capital divided into Shares.**

	\$ c.
For registration of a company whose nominal capital does not exceed \$ 10,000 . . .	10 00
For registration of a company whose nominal capital exceeds \$ 10,000, the above fee of \$ 10, with the following additional fees, regulated according to the amount of nominal capital, that is to say: . . .	
For every \$5,000 of nominal capital, or part of \$5,000, after the first \$10,000, up to \$25,000 . . .	5 00
For every \$5,000 of nominal capital, or part of \$5,000, after the first \$25,000 up to \$100,000 . . .	1 00
For every \$ 5,000 of nominal capital, or part of \$5,000, after the first \$100,000 . . .	0 25
For registration of any increase of capital made after the first registration of the company, the same fees per \$5,000 or part of \$5000, as would have been payable if such increased capital had formed part of the original capital at the time of registration, provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than \$ 100, taking into account, in the case of fees payable on an increase of capital after registering, the fees paid on registration.	
For registration of any existing company, except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance, the same fee as is charged for registering a new company.	
For registering any document hereby required or authorized to be registered, other than the memorandum of association . . .	1 00
For making a record of any fact hereby authorized or required to be recorded by the Registrar of Joint Stock Companies . . .	1 00

**Table C. Table of Fees to be paid to the Registrar of Joint Stock Companies by a Company not having a Capital divided into Shares.**

	\$ c.
For registration of a company whose number of members, as stated in the articles of association, does not exceed 20 . . .	10 00
For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 . . .	25 00



Capital and liabilities.		Property and assets.	
	Capital.		
I. Capital.	<p>Showing:</p> <p>1 The number of shares . . . . .</p> <p>2 The amount paid per share. . . . .</p> <p>3 If any arrears of calls, the nature of the arrear, and the names of the defaulters. . . . .</p> <p>4 The particulars of any forfeited shares.</p> <p>Showing:</p> <p>5 The amount of loans on mortgages or debenture bonds. . . . .</p> <p>6 The amount of debts owing by the company, distinguishing:</p> <p>a) Debts for which acceptances have been given . . . . .</p> <p>b) Debts to tradesmen for supplies of stock in trade or other articles. . . . .</p> <p>c) Debts for law expenses . . . . .</p> <p>d) Debts for interest on debentures or other loans. . . . .</p> <p>e) Unclaimed dividends. . . . .</p> <p>f) Debts not enumerated above . . . . .</p> <p>Showing:</p> <p>The amount set aside from profits to meet contingencies. . . . .</p> <p>Showing:</p> <p>The disposable balance for payment of dividend, etc. . . . .</p> <p>Claims against the company not acknowledged as debts. . . . .</p> <p>Moneys for which the company is contingently liable . . . . .</p>	<p>III. Property held by the company.</p> <p>7 Immoveable property—distinguishing:</p> <p>a) Freehold land. . . . .</p> <p>b) Do. buildings. . . . .</p> <p>c) Leasehold do. . . . .</p> <p>8 Moveable property, distinguishing:</p> <p>d) Stock in trade . . . . .</p> <p>e) Plant . . . . .</p> <p>The cost to be stated with deductions for deterioration in value as charged to the reserve fund or profit and loss. . . . .</p> <p>Showing:</p> <p>9 Debts considered good for which the company hold bills or other securities.</p> <p>10 Debts considered good for which the company hold no security . . . . .</p> <p>11 Debts considered doubtful and bad . . . . .</p> <p>Any debt due from a director or other officer of the company to be separately stated . . . . .</p> <p>Showing:</p> <p>12 The nature of investment and rate of interest . . . . .</p> <p>13 The amount of cash where lodged, and if bearing interest. . . . .</p>	<p>IV. Debts owing to the company.</p> <p>V. Cash and investments.</p>
II. Debts and liabilities of the company.			
VI. Reserve fund.			
VII. Profit and loss.			
Contingent liabilities.			

For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of \$25, with an additional dollar for every 50 members or less number after the first 100.	
For registration of a company in which the number of members is stated in the articles of association to be unlimited . . . . .	50.00
For registration of any increase in the number of members made after the registration of the company, in respect of every 50 members, or less than 50 members, of such increase, one dollar, provided that no one company shall be liable to pay on the whole a greater fee than \$50 in respect of its number of members, taking into account the fee paid on the first registration of the company.	
For registration of any existing company, except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance, the same fee as is charged for registering a new company.	
For registering any document hereby required or authorized to be registered, other than the memorandum of association. . . . .	1 00
For making a record of any fact hereby authorized or required to be recorded by the Registrar of Joint Stock Companies . . . . .	1 00

**Form D. Form of Statement referred to in Part III of the Ordinance,**

<sup>1</sup>The capital of the company is , divided into shares of each.

The number of shares issued is

Calls to the amount of dollars per share have been made, under which the sum of has been received.

The liabilities of the company on the first day of January (or July) were:

Debts owing to sundry persons by the company:

On judgment, \$

On mortgage or debentures, \$

On notes or bills, \$

On simple contracts, \$

On estimated liabilities, \$

The assets of the company on that day were:

Government securities (*stating them*), \$

Bills of exchange and promissory notes, \$

Cash at the bankers, \$

Other securities, \$

*The Second Schedule.*

**Forms.**

**Form No. 1. Memorandum of association of a company limited by shares.**

1st. The name of the company is "The *e.g.*, *British Guiana Cotton Company, Limited.*

2nd. The registered office of the company will be situate in *e.g.*, *City of Georgetown.*

3rd. The objects for which the company is established are *e.g.*, *the Cultivation of cotton in such places within the Colony as the company may from time to time determine, and the preparation and sale of the cotton so cultivated* and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th. The liability of the members is limited.

5th. The capital of the company is *e.g.*, *two hundred thousand* dollars, divided into *e.g.*, *two thousand shares of one hundred* dollars each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names:

Names, addresses, and description of subscribers.

Number of shares  
taken by each  
subscriber.

1.  
2.  
3.  
4.  
5.  
6.  
7.

Total shares taken . . . . .

Dated this day of 18

Witnesses to the above signatures,

<sup>1</sup>) If the company has no capital divided into shares the portion of the statement relating to capital and shares must be omitted.



*Memorandum of Association.*

3rd. The objects for which the company is established are e.g. the "mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

*C. D.*

*Members.*

2. The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

5. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

8. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

9. On the receipt of such requisition the directors shall forthwith proceed to convene a general meeting; if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionist, or any other five members, may themselves convene a meeting.

10. Seven days' notice at least, specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

**12.** No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of members is present at the commencement of such business, and such quorum

shall be ascertained as follows, that is to say: if the members of the company in the Colony at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members, with this limitation, that no quorum shall in any case exceed twenty.

13. If, within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if, at such adjourned meeting, a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman, if any, of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

16. The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

#### *Votes of members.*

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot, he may vote by his curator.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointer, or, if such appointer is a corporation, under its common seal.

23. No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form.

#### *Company, Limited.*

I, \_\_\_\_\_ of \_\_\_\_\_ in the county of \_\_\_\_\_ being a member of the \_\_\_\_\_ Company, Limited, hereby appoint \_\_\_\_\_ of \_\_\_\_\_ as my proxy, to vote for me and on my behalf at the ordinary (or extraordinary, *as the case may be*) general meeting of the company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 1 \_\_\_\_\_, and at any adjournment thereof to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 1 \_\_\_\_\_ (or at any meeting of the company that may be held in the year \_\_\_\_\_).

As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_ 1 \_\_\_\_\_  
Signed by the said \_\_\_\_\_ in the presence of \_\_\_\_\_

#### *Directors.*

25. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall, for all the purposes of the Companies Ordinance, 1898, be deemed to be directors.

#### *Powers of directors.*

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

#### *Election of directors.*

28. The directors shall be elected annually by the company in general meeting.

#### *Business of company.*

(Here insert rules as to mode in which business of insurance is to be conducted.)

#### *Accounts.*

29. The accounts of the company shall be audited by a committee of three members, to be called the audit committee.

30. The first audit committee shall be nominated by the directors out of the body of members.



31. Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.

32. The audit committee shall be supplied with a copy of the balance sheet, and it shall be their duty to examine the same, with the accounts and vouchers relating thereto.

33. The audit committee shall have a list delivered to them of all books kept by the company, and they shall at all reasonable times have access to the books and accounts of the company. They may, at the expense of the company, employ accountants or other persons to assist them in investigating such accounts, and they may, in relation to such accounts, examine the directors or any other officer of the company.

34. The audit committee shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations of the company, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, and, in case they have called for explanation or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

#### Notices.

35. A notice may be served by the company upon any member either personally, or by leaving it at his registered place of abode, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode, if such place of abode is within a postal district.

36. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed, and put into the Post Office.

#### Winding-up.

37. The company shall be wound up voluntarily whenever an extraordinary resolution as defined by the Companies Ordinance, 1898, is passed requiring the company to be wound up voluntarily.

#### *Names addresses, and description, of subscribers.*

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

Dated this                      day of                      , 18

Witnesses to the above signatures.

A. B.,

C. D.,

#### **Form No. 3. Memorandum and articles of association of a company, limited by guarantee, and having a capital divided into shares.**

##### *Memorandum of Association.*

1st. The name of the company is "The (e.g.—*Berbice Gas Light*) Company, Limited".

2nd. The registered office of the company will be situate in (e.g.—*Town of New Amsterdam*).

3rd. The objects for which the company is established are (e.g.—*the construction of gas works in the Town of New Amsterdam, and the lighting with gas the streets and public and private buildings thereof*), and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for the payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding one hundred dollars.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association:

#### *Names, addresses, and description of subscribers.*

- 1.
- 2.
- 3.

4.  
5.  
6.  
7.

Dated this                      day of                      18

Witness to the above signatures,

A. B.,  
C. D..

**Articles of Association to accompany preceding Memorandum of Association.**

*Capital of company.*

1. The capital of the company shall consist of (                      ) dollars divided into (                      ) shares of                      dollars each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

*Application of Table A.*

4. All articles of Table A contained in the first Schedule to the Companies Ordinance, 1898, shall be deemed to be incorporated with these articles, and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names:

Names, addresses, and description of subscribers.	Number of shares taken by each subscriber.
1.	
2.	
3.	
4.	
5.	
6.	
7.	
Total shares taken . . . . .	

Dated this                      day of                      , 18

Witnesses to the above signatures,

A. B.,  
C. D.,

**Form No. 4. Memorandum and articles of association of an unlimited company having a capital divided into shares.**

*Memorandum of Association.*

1st. The name of the company is "The (*e.g.—Patent Distillery*) Company."

2nd. The registered office of the company will be situate in (*e.g.—City of Georgetown.*)

3rd. The objects for which the company is established are (*e.g.—the working of a patent method of distilling rum, of which method John Brown, of Georgetown, is the sole patentee.*)

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association:

*Names, addresses, and description of subscribers.*

1.  
2.  
3.  
4.  
5.  
6.  
7.

Dated this                      day of                      , 18

Witnesses to the above signatures,

A. B.,  
C. D..





Folio in Register Ledges containing particulars	Names, addresses, and occupations.				Account of shares.				Remarks.	
	Surname.	Christian name.	Address.	Occupation.	1 Number of shares held by existing members at date of Return.	2 Particulars of shares transferred during the preceding year by per- sons who are still members.		2 Particulars of shares transferred during the preceding year by per- sons who have ceased to be members		
						Number. 3	Date of re- gistration of transfer.	Number. 3		Date of re- gistration of transfer.

N.B.—In making out this return, care must be taken to state all the addresses as fully as possible, or it will not be received at the Registration Office.

#### Form No. 6. Licence to hold lands.

The Governor-in-Council hereby licences the Association, Limited, to hold the lands hereunder described (*here insert description of lands*). The conditions of this licence are (*here insert conditions, if any*).

#### The Third Schedule.

##### *Meetings of creditors and contributories.*

1. The meetings of creditors and contributories shall be held within twenty-one days after the date of the winding-up order, or within such further time as the Court may approve, unless a special manager has been appointed in which case such meetings shall be held within one month from the date of such order, or within such further time as aforesaid.

2. The Administrator-General shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the *Gazette* and in a local paper. Notice of such meeting shall also be sent by post to every person appearing by the company's books to be a creditor of the company and to every member of the Company.

3. The Administrator-General shall also as soon as practicable send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books, or otherwise, to be a contributory of the company, a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the Administrator-General may think fit to make; but the proceedings at any such meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the Administrator-General most convenient for the majority of the creditors and contributories.

5. The Administrator-General or some person nominated by him, shall be the chairman at the meetings.

6. A person shall not be entitled to vote as a creditor unless he has duly proved a debt to be due to him from the company, and the proof has been duly lodged before the time appointed for the meeting.

7. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

8. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

<sup>1</sup> The aggregate number of shares held, and not the distinctive numbers, is to be stated, and the column should be added up throughout, so as to make one total to agree with that stated in the summary to have been taken up.

<sup>2</sup> When the shares are of different classes these columns may be subdivided, so that the number of each class held or transferred, may be shown separately.

<sup>3</sup> The list should include all transfers since the date of the last return, and the date of registration of each transfer should be given, as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferrer, and not opposite that of the transferee; but the name of the transferee may be inserted in the Remarks column, immediately opposite the particulars of each transfer.



9. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in insolvency has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting but not for the purposes of dividend to deduct it from his proof.

10. It shall be competent to the Administrator-General or to the liquidator, within twenty-eight days after a proof estimating the value of a security as aforesaid had been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum. Provided, that where a creditor has put a value on such security he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the liquidator requires the security to be given up.

11. The chairman of the meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

12. A creditor or a contributory may vote either in person or by proxy.

13. Every instrument of proxy shall be in the prescribed form and shall be issued by the Administrator-General or by the liquidator of the company and every written part thereof shall be in the handwriting of the person giving the proxy, or of any manager or clerk or other person in his regular employment, or of a commissioner to administer oaths to affidavits.

14. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the Administrator-General or of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

15. A creditor or a contributory may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.

16. A creditor or a contributory may give a special proxy to any person to vote at any specified meeting, or adjournment thereof: a) For or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and b) On all questions relating to any matter other than those above referred to and arising at any specified meeting or adjournment thereof.

17. A proxy shall not be used unless it is deposited with the Administrator-General before the meeting at which it is to be used.

18. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring the appointment of liquidator, except by the direction of a meeting of creditors or contributories, the Court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

19. A creditor or contributory may appoint the Administrator-General to act in manner prescribed as his general or special proxy.

20. The chairman of the meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

21. A meeting shall not be competent to act for any purpose except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present or represented thereat, at least three creditors or contributories, or all the creditors or contributories if their number does not exceed three.

22. If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint not being less than seven or more than twenty-one days.

23. The chairman of the meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

24. No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company: Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

#### *The Fourth Schedule.*

(This Schedule was added by Ord. No. 27 of 1902, and contains a table of fees.)

**b) No. 27 of 1902. An Ordinance to amend the Companies Ordinance, 1898 (16th August, 1902).**

[This Ordinance adds the fourth Schedule to Ord. No. 21 of 1898.]

**c) No. 7 of 1868. An Ordinance with regard to Trading Companies incorporated under the Law of England, and for confirming the Title of the Colonial Company, Limited, to Lands in this Colony (29th July, 1868).**

**Short title.** 1. This Ordinance may be cited as the *English Companies (Holding of Lands) Ordinance, 1868*.

**Power to company incorporated under the Companies Acts to hold lands in the Colony.** 2. It shall be lawful for any company already incorporated or which may hereafter be incorporated under the *Companies Act, 1862*, or the *Companies Akt, 1867*, to hold lands and other immoveable property in this Colony in the same manner to all intents and purposes as if such company had been incorporated in this Colony under the *Companies Ordinance, 1864*.

**Evidence of incorporation of company.** 3. It shall be lawful for any company already registered, or which may hereafter be registered, under either of the aforesaid Acts of Parliament to deliver to the Registrar of British Guiana, to be recorded by him, a certificate of incorporation of such company purporting to be under the hand of the Registrar of Joint Stock Companies, or a copy of such certificate of incorporation proved to be a true and correct copy by the oath or solemn declaration of the secretary or other officer of such company, sworn or made before the mayor or other chief magistrate of any city, town, or borough, or before any notary public or justice of the peace in Great Britain or Ireland, and such certificate or copy thereof duly recorded, or any office copy thereof certified by such Registrar, shall be conclusive evidence in this Colony of the incorporation of such company.

*Semble*, the incorporation of the company may be proved by affidavit. — *In re McGowan*, (7th October, 1901).

**Evidence of memorandum and articles of association.** 4. It shall be lawful for any company already registered, or which may hereafter be registered under either of the aforesaid Acts of Parliament to deliver to the Registrar of British Guiana, to be recorded by him, a copy of the memorandum of association, and a copy of the articles of association, registered under either of the said Acts of Parliament, and proved to be true and correct copies by the oath or solemn declaration of the secretary or other officer of such company sworn or made in manner hereinbefore mentioned; and every such copy duly recorded, or any office copy thereof certified by such Registrar shall be conclusive evidence in this Colony of such memorandum of association and articles of association respectively and of the signing thereof by the persons by whom the same respectively purport to be signed.

**Manner of executing deed and mode of proving same.** 5. Any deed of any incorporated company registered under either of the aforesaid Acts of Parliament which is executed out of this Colony, but which is recorded in this Colony, shall be executed under the common seal of such company in the presence of two witnesses; and the execution of such deed, and that the seal affixed thereto is the common seal of the company, and that the same was affixed thereto by the authority of the board of directors or managers of such company, and in conformity with the articles of association of such company, and the signatures of the directors or managers to any such deeds (where such signatures are required by the articles of association of such company), and the signature to such deed of the secretary or other officer by whom such seal may have been affixed, may be proved by the affidavit or solemn declaration of one of such witnesses or of the secretary or other officer affixing such seal, sworn or made in manner hereinbefore mentioned.

**Effect of instrument under hand of attorney of company.** 6. Every instrument made in this Colony on behalf of any such incorporated company and executed in the presence of two witnesses under the hand of any person empowered by instrument in writing under the common seal of such company, either generally or in respect of any specified matter as its attorney to execute deeds on its behalf in this



Colony, shall be binding on such company, and have the same effect as if it were under the common seal of the company.

[7-8. Relate to the Colonial Company, Ltd.]

**d) No. 12 of 1910. An Ordinance to extend the Provisions of the English Companies (Holding of Lands) Ordinance, 1868 (10th September, 1910).**

**Companies incorporated in England under Stat. 8 Edw. 7, c. 69, to have power to hold lands.** 1. The provisions of the *English Companies (Holding of Lands) Ordinance, 1868*, shall be deemed to apply to the Act passed in the session of Parliament held in the eighth year of His late Majesty's reign, entitled an Act to consolidate the Companies Act, 1862, and the Acts amending it, which said Act is hereinafter referred to as the *Companies (Consolidation) Act, 1908*, as if the same were mentioned in the said Ordinance, and every company incorporated, or which may hereafter be incorporated under the said Act or any statutory extension or modification thereof or any Act which may hereafter be substituted therefor may hold lands and other immoveable property and interests therein in this Colony in the same manner to all intents and purposes as if such company had been incorporated in this Colony under any Ordinance or Ordinances for the time being in force providing for the incorporation of companies, and shall, in this Colony, have all such other rights, powers, and privileges, and be subject to all such liabilities and duties as are in and by the said *English Companies (Holding of Lands) Ordinance, 1868*, conferred and imposed on companies incorporated under the Acts in the said Ordinance referred to as the *Companies Act, 1862*, and the *Companies Act, 1867*.

**Temporary provisions.** 2. 1. Any transport, grant, concession, licence, transfer, lease, or other disposition of land or other immoveable property, or any interest therein, passed, granted, issued, or made to any company incorporated under the *Companies (Consolidation) Act, 1908*, before the commencement of this Ordinance, shall be as valid and effectual for all purposes whatsoever as if it had been passed after the commencement of this Ordinance. 2. Any act, deed, document, instrument, affidavit, declaration, certificate, office-copy, copy, proceeding or thing of or in connection with or on behalf of any such company heretofore done, made, extended, sworn or declared to, issued, granted, taken, attested, or recorded in the manner in and by sections 3, 4, 5, or 6 of the *English Companies (Holding of Lands) Ordinance, 1868*, provided for the doing, making, executing, deposing or declaring to, issuing, granting, taking, attesting, or recording of like acts, deeds, documents, instruments, affidavits, declarations, certificates, office-copies, copies, proceedings, or things of or in connection with companies registered under the *Companies Act, 1862*, and the *Companies Act, 1867*, and shall be of the same validity, and shall have the same effect as evidence or otherwise, as if such company had been registered under either of the said last mentioned Acts.

**Proof of documents signed by Registrar or Assistant Registrar of Companies.** 3. Any certificate or other document or any copy or extract of any such document or any part of any such document heretofore or hereafter purporting to be signed, attested, or certified, by the Registrar of Companies or the Registrar, as defined in section 285 of the *Companies (Consolidation) Act, 1908*, or by an Assistant Registrar, shall have the same force and effect as if it purported to be signed, attested, or certified by the Registrar of joint stock companies as provided for in the *English Companies (Holding of Lands) Ordinance, 1868*, and any copy of a memorandum of association or articles of association of such a company heretofore or hereafter purporting to be similarly signed, attested, or certified delivered to the Registrar of British Guiana to be recorded by him shall have the same effect as if proved to be a true and correct copy by the oath of the secretary of the company as provided for in the *English Companies (Holding of Lands) Ordinance, 1868*, and every such copy so recorded, or an office-copy thereof certified by the Registrar of British Guiana shall be conclusive evidence in this Colony of the said memorandum and articles of association respectively.

**Short title.** 4. This Ordinance may be cited as the *English Companies (Holding of Lands) Ordinance, 1910*.

## Sale of Goods.

The law relating to sale of goods is the Roman-Dutch law, but English decisions are frequently cited. There are no provisions corresponding to the Statute of Frauds.

By English law the sale of an ascertained chattel transfers the property in the thing sold to the buyer, whereas under the law prevailing in British Guiana a sale does not transfer the property, but only invests the vendee with a right to require the vendor to transfer. — *De Freitas v. Santos*, (24th June, 1891) 2 L.R. (N.S.) 1. The duty of a seller under the Roman-Dutch law is only to deliver vacant possession of the thing sold, and to warrant the purchaser against eviction, i.e., to compensate him to the full extent of his loss (*quantum interest*) if he is subsequently ousted by the execution of a judicial sentence based on a cause existing at the time of the sale, due notice of the institution of the judicial proceedings to obtain eviction having been given by the buyer to the seller. If, however, a seller knowingly delivers a thing not his own to a buyer who is ignorant of the fact, the latter may, without awaiting eviction, take proceedings to compel the seller to make good any damages (*id quod interest*) sustained thereby, provided he has paid the price. It is also open to a buyer, where sued for the price, if eviction be imminent, to require the seller before payment to provide sufficient sureties against eviction or to make consignment or deposit of the purchase money. — *Payne and Williams v. Sproston, Ltd.* (5th March, 1903). Where moveables are left in the possession of the seller they are liable to be levied on by creditors of such seller, unless there is clear evidence of a bona fide sale and a delivery. — *Ramsammy v. Mannamootoo*, (25th June, 1861), 2 L.R. (O.S.) 71; *D'Aguiar v. Young*, (3d June, 1901); *Pereira v. Gonsalves*, (20th November, 1903); *O'Donoghue v. Mohabeer*, (3d April, 1903). The cases of *D'Aguiar v. Young* (supra) and *Pereira v. Gonsalves* (supra) are cases where the claimant alleged that he had bought the goods levied on from the judgment debtor, and it was held there was no bona fide sale by the debtor to the claimant, that secrecy of the sale and the seller being allowed in possession were badges of fraud. But where the goods levied on were never the property of the debtor, and the claimant bought them from a third person, and the purchase has not been attacked in any way as fraudulent, a different question is presented. *Quære*, whether, in the latter case, the goods might be regarded as under the order and disposition of the person in possession in the event of proceedings in insolvency against him. — *Laurence v. Conyers*, (14th July, 1908). A tender made in response to an offer to sell to the highest bidder completes a contract of sale. — *McGowan v. Gomas*, (4th July, 1892), 2 L.R. (N.S.) 171. An agreement under the terms of which one party agrees to purchase an object, paying the price in stated instalments, and providing that the property in the object should not pass until the instalments are fully paid, is not a sale. It is an executory agreement to purchase. — *Macquarrie v. Cunningham*, (13th June, 1902). Where a sale is made under an agreement that the goods shall be landed in good order and condition, a failure to deliver them in that condition entitles the buyer to rescind in limine. But where the buyer has accepted a portion of the goods, or has placed himself in such a position that he cannot return all the goods (e.g., where he has sold a part) he is limited to damages. — *De Freitas v. Santos*, (24th June, 1891), 2 L.R. (N.S.) 1. It does not appear to be settled whether the doctrine of *laesio enormis* applies, but if it does apply it would seem to extend to buyers as well as to sellers. — *Raleigh v. Jasmins*, (4th July, 1902); c.p. *De Freitas v. De Souza*, (5th March, 1906). The law prima facie presumes that any money paid on account of a purchase is paid as a guarantee for the carrying out of that purchase. In case of default by the purchaser, such money is forfeited. — *Le Blanc v. Lashley*, (15th June, 1901).

## Bills of Exchange.

a) No. 13 of 1891. An Ordinance to codify the Law relating to Bills of Exchange, Cheques, and Promissory Notes (15th July, 1891).

[This Act is identical in all material respects with the Imperial *Bills of Exchange Act, 1882*, (45 & 46 Vic. c. 61).]

An instrument payable to the executor of the estate of a deceased person is valid. — *Executor of d'Andrade v. Small*, (5th October, 1903), distinguishing *Dos Santos v. Sargent*, (June 1890). The sale of what is called in the Civil Law an expectation dependent on a chance (*venditio spei*) is a good consideration. — *Ho-A-Hing v. D'Andrade*, (6th June, 1902). *Semble*, where an instrument is signed with a mark it is not necessary that the marksman should hold the pen. A mere touching is sufficient. — *Petansing v. Monjeriea*, (13th November, 1909). As to signature affixed in a ministerial capacity, see *Teixeira v. Harding*, (5th May, 1906). A note signed by two persons and reading "I promise to pay" is a several as well as a joint note. — *Petansing v. Montjeriea*, (13th November, 1909). A married woman signing a negotiable instrument as an accommodation party cannot since the *Married Persons Property Ordinance, 1909*, come into force claim the benefit of the *Senatusconsultum Velleianum* and the *Authentica si qua mulier*. *Semble*, a woman who on the face of a negotiable instrument holds herself out as being indebted to another cannot



claim the benefit of these enactments as a defence to an action brought by a holder in due course. — *Farnum v. Kaster*, (16th October, 1907). Parol evidence is not admissible to contradict an unconditional acceptance of a bill of exchange. — *Lewis v. Wharton*, (9th March 1903). A holder in due course holds the instrument free from any defect of title of prior parties, as well as from mere personal defences available to prior parties amongst themselves. — *De Freitas v. Giles*, (13th June, 1908). A *donatio mortis causa* of a negotiable instrument is valid without indorsement. — *Chengamah v. Angoo Vandeyar*, (26th May, 1903). When a bill is presented at the proper place and after the exercise of reasonable diligence no person authorized to pay or refuse payment can be found there, no further presentment to the acceptor is required. — *Lopes and Fernandes v. Rose*, (29th June, 1907) Presentment for payment is dispensed with by waiver of presentment, express or implied. A promise to pay is an implied waiver. — *Vieira v. Gomes*, (2d February, 1907). In order to charge an acceptor or maker it is not necessary that the instrument be presented at maturity at the place where it is made payable. The person primarily liable undertakes to have the money available at maturity at the place indicated for payment, and to leave it there until the instrument is presented. If by reason of his doing so he sustains a loss (e.g. by the failure of the bank) he is exonerated to the extent of such damage. — *Lewis v. Williams*, (2d October, 1909). Notice of dishonour may be given orally, and in any terms which sufficiently identify the instrument and intimate that the instrument has been dishonoured. A statement by the holder to accommodation indorser made on the day following dishonour in the following terms: "The note fell due yesterday. Capello (the maker) is in the country, and the note has not been paid by Capello, what are you (the indorser) going to do?" is a sufficient notice of dishonour. — *Da Silva v. Capello and Gomes*, (3d December, 1902).

## **b) No. 17 of 1907. An Ordinance to amend the Bills of Exchange Ordinance 1891 (31st July, 1907).**

[This Ordinance is substantially identical with the Imperial *Bills of Exchange (Crossed Cheques) Act, 1906*, (6 Edw. 7, c. 17).]

### **Public Holidays.**

## **No. 1 of 1875. An Ordinance to make Provision for Public Holidays, and respecting Obligations to make Payments and do other Acts on such Public Holidays (27th March, 1875).**

**Short title.** 1. This Ordinance may be cited as the *Public Holidays Ordinance, 1875*.

**Certain days to be public holidays. Schedule.** 2. After the commencement of this Ordinance, the several days mentioned in the Schedule to this Ordinance, (and which days are hereinafter referred to as public holidays) shall be kept as close holidays in all the public offices and in all banks in this Colony.

**Making of payment on public holiday.** 3. 1. No person shall be compellable to make any payment or to do any act upon such public holidays which he would not be compellable to do or make on Christmas Day or Good Friday. 2. The obligation to make such payment and do such act shall apply to the day following such public holiday; and the making of such payment and doing of such act on such following day shall be equivalent to payment of the money or performance of the act on the holiday.

**Power to appoint special public holiday.** 4. It shall be lawful for the Governor in Council from time to time, as he may see fit, to appoint a special day to be observed as a public holiday, and any day so appointed shall be kept as a close holiday throughout this Colony and in all public offices and in all banks in this Colony.

**Power to alter day appointed for public holiday.** 5. It shall be lawful for the Governor in Council in like manner, from time to time, when it is made to appear to him in any special case, that in any year it is inexpedient that a day by this Ordinance appointed for a public holiday should be a public holiday, to declare that such day shall not in such year be a public holiday, and to appoint such other day as to him may seem fit to be a public holiday instead of such day, and thereupon the day so appointed shall in such year be substituted for the day so appointed by this Ordinance.

*Schedule.**Public Holidays.*

The first of January, if a week-day.

Easter Monday.

The Monday in Whitsun Week.

The first Monday in August.

The twenty-sixth day of December, if a week-day, but if the twenty-sixth day falls on a Sunday, then the twenty-seventh day of December.

**Insolvency.**

**a) No. 29 of 1900. An Ordinance to consolidate and amend the Laws relating to Insolvency (25th July, 1900).**

*Preliminary.*

**Short title.** 1. This Ordinance may be cited as the *Insolvency Ordinance 1900*.  
Imp. § 1.

**Interpretation of terms.** 2. In this Ordinance, unless the context otherwise requires: "The Court" means the Supreme Court of British Guiana in its civil jurisdiction; "The Full Court" means the Court composed of two or more Judges; "Judge" includes the Chief Justice and any Judge of the Court; "The Registrar" means the Registrar of British Guiana, and includes any sworn clerk and notary public, and any assistant sworn clerk in the office of the Registrar; "The Registrar's Office" includes any branch office of the Registrar's Office in any county of the Colony; "Marshal" includes any officer charged with the execution of a writ or other process; "The Administrator-General"<sup>1)</sup> means the Administrator-General of British Guiana; "Assignee" means the assignee in insolvency of debtor's estate; "Available act of insolvency" means any act of insolvency available for an insolvency petition at the date of the presentation of the petition on which the receiving order is made; "Debt provable in insolvency" or "provable debt" includes any debt or liability by this Ordinance made provable in insolvency; "Property" includes money, goods, things in action, land, and every description of property, whether moveable or immovable, and whether situate in this Colony or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined; "Goods" includes all moveable property; "Settlement" includes any ante-nuptial contract; "Ordinary resolution" means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution; "Resolution" means ordinary resolution; "Special resolution" means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution; "Secured creditor" means a person holding a mortgage, charge, or lien on the property of the debtor, or any part thereof, which by the law of the Colony is valid against creditors as a security for a debt due to him from the debtor; "Prescribed" means prescribed by general rules within the meaning of this Ordinance; "General rules" include forms; "Gazetted" means published in the *Gazette*; "Person" includes a body of persons, corporate or unincorporate; "Schedule" means Schedule to this Ordinance. The Schedules to this Ordinance shall be construed and have effect as part of this Ordinance.

Imp. § 168. Held, a secured creditor. — *In re Mendonca, Ex parte Mendonca*, (9th January, 1904), reversing *Mendonca v. Administrator-General*, (5th August, 1903).

*Part I. Proceedings from Act of Insolvency to Discharge.**Acts of insolvency.*

**Cases in which debtor commits act of insolvency.** 3. 1. A debtor commits an act of insolvency in each of the following cases, that is to say: a) If, in the Colony or

<sup>1)</sup> By Ord. No. 6 of 1905 the title of the Administrator-General as used in this Ordinance is changed to Official Receiver. The Insolvency Rules, 1901, are ratified by Ord. 20 of 1901.



elsewhere, he makes any conveyance or assignment of his property for the benefit of his creditors generally; or b) If, in the Colony or elsewhere, he makes any conveyance, gift, delivery, or transfer of his property, or any part thereof, which is fraudulent as against his creditors or any of them; or c) If, in the Colony, or elsewhere, he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would, under this or any other Ordinance for the time being in force, be void as a fraudulent preference if he were adjudged insolvent; or d) If, with intent to defeat or delay his creditors, he does any of the following things, namely: departs out of the Colony, or, being out of the Colony, remains out of the Colony, or departs from his dwelling house, or otherwise absents himself, or begins to keep house; or e) If execution issued against him has been levied by seizure of any of his property under process in execution, in an action in any Court, or in any civil proceeding in the Court, and he allows such property to remain in execution for ten days without taking steps to have such execution set aside and such property released: Provided that where a plantation on which there are forty acres under cultivation or any immigrants under indenture, or where the owner of immoveable property is proceeded against without naming such proprietor, the seizure and sale in execution of such property shall not be deemed an act of insolvency by the proprietors of such immoveable property; or f) If any person has obtained, or is for the time being entitled to enforce a final judgment against him for any amount, and, execution thereon not having been stayed, has served on him, in the Colony or, by leave of the Court, elsewhere, an insolvency notice under this Ordinance, requiring him to pay the judgment debt in accordance with the terms of the judgment or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not, within seven days after service of the notice, in case the service is effected in the Colony, and, in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counter-claim, set-off, or cross-demand, which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained; or g) If he files in the Registrar's Office a declaration of his inability to pay his debts or presents an insolvency petition against himself; or h) If he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts, or, intimates, in any one period of seven days, to three or more of his creditors that he is unable to pay his debts in full, or suspends payment of his debts. 2. An insolvency notice under this Ordinance shall be in the prescribed form, and shall state the consequences of non-compliance therewith, and shall be served in the prescribed manner.

Imp. § 4; 53 & 54 Vic. c. 71, § 1. See § 119, *infra*. Under subsection 1 (e) the period specified is to be reckoned exclusive of the day of seizure. — *In re Lough, Ex parte Wong Fung Kiow*, (10th December, 1909), affirming s.c. (19th June, 1909). Act of insolvency held sufficient. — *In re Buie, Ex parte De Cairos Bros.* (6th January, 1909).

#### *Receiving order.*

**Jurisdiction to make receiving order.** 4. Subject to the conditions hereinafter specified, if a debtor commits an act of insolvency, the Court may, on an insolvency petition being presented, either by a creditor or by the debtor, make an order, in this Ordinance called "a receiving order," for the protection of the estate.

#### Imp. § 5.

**Conditions on which creditors may petition for receiving order.** 5. 1. A creditor shall not be entitled to present an insolvency petition against a debtor unless: a) The debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to two hundred and forty dollars; and b) The debt is a liquidated sum, payable either immediately or at some certain future time; and c) The act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition; and d) The debtor is domiciled in the Colony, or has immoveable property in the Colony, or within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling house or place of business in the Colony. 2. If the petitioning creditor is a secured creditor, he must, in his petition, either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of his security. In the latter case, he may be admitted

as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated in the same manner as if he were an unsecured creditor.

Imp. § 6.

**Proceeding and order on creditor's petition. 6.** 1. A creditor's petition shall be verified by an affidavit of the creditor or of some person on his behalf having knowledge of the facts, and shall be served in the prescribed manner. 2. At the hearing, the Court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of insolvency, or, if more than one act of insolvency is alleged in the petition, of some one of the alleged acts of insolvency, and, if satisfied with the proof, may make a receiving order in pursuance of the petition. 3. If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the service of the petition, or of the act of insolvency, or is satisfied by the debtor that he is able to pay his debts or that for other sufficient cause no order ought to be made, the Court may dismiss the petition. 4. Where the act of insolvency relied on is non-compliance with an insolvency notice to pay, secure, or compound for a judgment debt, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment. 5. Where the debtor appears on the petition, and denies that he is indebted to the petitioner or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security, if any, being given as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt. 6. Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause, it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid. 7. Where it appears to the Court that the petition has been presented without reasonable and probable cause, the Court may order the petitioner to pay to the person against whom the petition is presented such sum by way of damages as will compensate such person for the injury and inconvenience occasioned by the presentment of the petition. 8. A creditor's petition shall not, after presentment, be withdrawn without the leave of the Court.

Imp. § 7.

**Proceedings and order on debtor's petition. 7.** 1. A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of insolvency without the previous filing by the debtor of any declaration of inability to pay his debts, and the Court shall thereupon make a receiving order. 2. A debtor's petition shall not, after presentment, be withdrawn without the leave of the Court.

Imp. § 8.

**Effect of receiving order. 8.** On the making of a receiving order, the official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Ordinance, no creditor to whom the debtor is indebted in respect of any debt provable in insolvency shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, except with the leave of the Court and on such terms as the Court may impose: Provided that this enactment shall not affect the power of any creditor who is secured on any ship or vessel, or any share therein, to realize or deal with his security in the same way as he would have been entitled to realize or deal with his security if this enactment had not been made.

Imp. § 9.

**Discretionary powers as to appointment of receiver and stay of proceedings against debtor. 9.** 1. The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of an insolvency petition and before a receiving order is made, appoint the official receiver to be interim receiver of the property of the debtor or of any part thereof, and direct him to take immediate possession thereof or of any part thereof. 2. The Court may, at any time after the presentation of an insolvency petition, stay any action, execution, or other legal process against the property or person of the debtor, and any Court in which proceedings are pending against a debtor may on proof that an insolvency petition has



been presented by or against the debtor either stay the proceedings or allow them to continue on such terms as it may think just.

**Imp. § 10. A receiver appointed.** — *Boos v. Carreiro*, (24th December, 1895); *De Freitas v. Dos Santos*, (24th June, 1891), 1 L.R. (N.S.) 215.

**Service of order staying proceedings.** 10. Where the Court makes an order staying any such action or other proceeding or staying proceedings generally, the order may be served by sending a copy thereof, by prepaid post letter, to the address of the plaintiff or other party prosecuting such action or other proceeding.

**Imp. § 11.**

**Power to the official receiver to appoint special manager of debtor's estate or business.** 11. 1. The official receiver may, at any time after a receiving order is made or after he is appointed interim receiver, on the application of any creditor or creditors, if he is satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver appoint a manager thereof accordingly to act until such time as he may deem fit or an assignee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver. 2. The special manager shall give security and account in such manner as the official receiver may direct. 3. The special manager shall receive such remuneration as the creditors may, by resolution at an ordinary meeting, determine, or, in default of any such resolution, as may be prescribed.

**Imp. § 12.**

**Advertisement of receiving order.** 12. Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, and the date of the petition, shall be gazetted and advertised in one newspaper in the prescribed manner.

**Imp. § 13.**

*Proceedings consequent on order.*

**First and other meetings of creditors.** 13. 1. As soon as may be after the making of a receiving order against a debtor, a general meeting of his creditors (in this Ordinance referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be entertained or whether it is expedient that the debtor shall be adjudged insolvent, and generally as to the mode of dealing with a debtor's property. 2. With respect to the summoning of, and proceedings at, the first and other meetings of creditors, the rules contained in the first Schedule shall be observed.

**Imp. § 15.**

**Debtor's statement of affairs.** 14. 1. Where a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names and residences, of his creditors, the securities held by them respectively, and the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require. 2. The statement shall be so submitted within the following times, namely: a) If the order is made on the petition of the debtor, within three days from the date of the order; and b) If the order is made on the petition of a creditor, within seven days from the date of the order: Provided that the official receiver may, in either case, for special reasons, extend the time for any further period not exceeding ten days: Provided also, that the Court may, for special reasons, further extend the time for such period as may be necessary. 3. If the debtor fails, without reasonable excuse, to comply with the requirements of this section, the Court may on the application of the official receiver or of any creditor, adjudge him insolvent. 4. Any person stating himself in writing to be a creditor of the insolvent may, either personally or by his agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom, on paying the prescribed fee. Any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court and shall be punishable accordingly on the application of the official receiver or assignee.

**Imp. § 16.**

*Public examination of debtor.*

**Public examination of debtor.** 15. 1. Where the Court makes a receiving order, it shall hold a public sitting, on a day to be appointed by the Court, for the examina-

tion of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings, and property. 2. The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs. 3. The Court may adjourn the examination from time to time. 4. Any creditor who has tendered a proof, or his representative authorized in writing, may question the debtor concerning his affairs and the causes of his failure. 5. The official receiver shall take part in the examination of the debtor, and for the purpose thereof, if specially authorized by the Court, may employ a barrister or solicitor or both. 6. If an assignee is appointed before the conclusion of the examination, he may take part therein. 7. The Court may put such questions to the debtor as it may think expedient. 8. The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over by or to and signed by the debtor, and may thereafter be used in evidence against him. Such notes shall be open to the inspection of any creditor at all reasonable times, on payment of the prescribed fee. 9. When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors. 10. Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, the Court may make an order dispensing with such examination or directing that the debtor be examined on such terms, in such manner, and at such place as to the Court seems expedient.

Imp. § 17; 53 & 54 Vic. c. 71, § 2. See *In re Da Costa*, (12th January, 1891), 1 L.R. (N.S.) 149.

*Composition or scheme of arrangement.*

**Compositions and schemes of arrangement.** 16. 1. Where a debtor intends to make a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of affairs, he shall, within seven days of submitting his statement of affairs, or within such time thereafter as the official receiver may fix, lodge with the official receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed. 2. In such case the official receiver shall hold a meeting of creditors before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal with a report thereon, and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors, and when approved by the Court shall be binding on all the creditors. 3. The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the official receiver, calculated to benefit the general body of creditors. 4. Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting. 5. The debtor or the official receiver may, after the proposal is accepted by the creditors, apply to the Court to approve it and notice of the time appointed for hearing the application shall be given to each creditor who has proved. 6. The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the Court in opposition to the application notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal. 7. The Court shall, before approving the proposal, hear a report of the official receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor. 8. If the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required where the debtor is adjudged insolvent to refuse his discharge, the Court shall refuse to approve the proposal. 9. If any facts are proved on proof of which the Court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged insolvent, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than thirty-five cents



in the dollar on all the unsecured debts provable against the debtor's estate. 10. In any other case the Court may either approve or refuse to approve the proposal. 11. If the Court approves the proposal, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the Court. 12. A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in insolvency, but shall not release the debtor from any liability under any judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability. 13. A certificate of the official receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity. 14. The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of court. 15. If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by the official receiver or the assignee, or by any creditor, adjudge the debtor insolvent, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged insolvent under this subsection, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the insolvency. 16. If under or in pursuance of a composition or scheme an assignee is appointed to administer the debtor's property, or manage his business, or to distribute the composition, sections 25 and 68 to 85 (both inclusive) of this Ordinance shall apply as if the assignee were an assignee in insolvency and as if the terms "insolvency," "insolvent," and "order of adjudication," included respectively a composition or scheme or arrangement, a compounding or arranging debtor, and order approving the composition or scheme. 17. Part III of this Ordinance shall so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "assignee," "insolvency," "insolvent," and "order of adjudication," as in the last preceding subsection. 18. No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent. 19. The acceptance by a creditor of a composition or scheme shall not release any person who under this Ordinance would not be released by an order of discharge if the debtor had been adjudged insolvent.

Imp. § 18. Imp. § 3. See *In re M. Li Qui Lung*, (28th March, 1903); *In re Figueria*, (22d July, 1890), 1 L. R. (N.S.) 144.

**Saving from effects of acceptance of composition of certain debts.** 17. Notwithstanding the acceptance and approval of a composition or scheme, such composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Ordinance, the debtor would not be discharged by an order of discharge in insolvency, unless the creditor assents to the composition or scheme.

Imp. § 19.

#### *Adjudication of insolvency.*

**Power to adjudge debtor insolvent.** 18. 1. At the time of making a receiving order, or at any time thereafter, the Court may, on the application of the debtor adjudge him insolvent: such application may be made orally and without notice. 2. Where a receiving order is made against a debtor, the following provisions shall have effect, that is to say: a) If no creditors attend at the time and place appointed for the first meeting of creditors or any adjournment thereof, or if sufficient creditors do not attend thereat to form a quorum; or b) If the creditors, at the first meeting of creditors or any adjournment thereof, by ordinary resolution, resolve that the debtor be adjudged insolvent, or pass no resolution; or c) If a composition or scheme

is not accepted and approved in pursuance of this Ordinance within twenty-one days after the conclusion of the examination of the debtor or such further time as the Court may allow; or d) If the official receiver satisfies the Court that the debtor does not intend to propose a composition or scheme, or that the debtor has absconded or is wilfully keeping out of the jurisdiction of the Court in order to avoid examination in respect of his affairs or otherwise to avoid, delay, or embarrass proceedings in insolvency against him, the Court shall, on the application either of a creditor or of the official receiver, forthwith adjudge the debtor insolvent and thereupon the property of the insolvent shall become divisible among his creditors and shall vest in an assignee. 3. Notice of every order adjudging a debtor insolvent stating the name, address, and description of the insolvent and the date of the adjudication, shall be gazetted and advertised in a newspaper in the prescribed manner. 4. The date of the order shall, for the purposes of this Ordinance, be the date of the adjudication.

Imp. § 20. *Quære*, whether a debtor can be adjudged insolvent on the official receiver's reports that no creditors attended the meeting of creditors. — In re D'Abreu (3d April, 1892) 2 L.R. (N.S.) 68.

**Appointment of assignee. 19.** 1. Where the debtor is adjudged insolvent, or the creditors have resolved that he be adjudged insolvent, the creditors may by ordinary resolution appoint some fit person whether a creditor or not, to fill the office of assignee of the property of the insolvent or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned. It shall not, however, be obligatory on the creditors to appoint an assignee, and where none is appointed the official receiver shall act as such. 2. The person so appointed shall give security in manner prescribed to the satisfaction of the official receiver, and the official receiver, if satisfied with the security, shall certify that the appointment has been duly made, unless he objects to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed has been previously removed from the office of assignee of an insolvent's property for misconduct or neglect of duty or is not fit to act as assignee or that his connection with or relation to the insolvent or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally. 3. Provided that when the official receiver does not approve of any such security or makes any such objection he shall, if so requested by a majority in value of the creditors, notify the non-approval or objection to the Court, and thereupon the Court may decide on its validity. 4. The appointment of an assignee shall take effect as from the date of the certificate. 5. The official receiver shall not, save as by this Ordinance provided, be the assignee of the property of the insolvent. 6. If an assignee is not appointed by the creditors within four weeks from the date of adjudication, or in the event of negotiations for a composition or scheme being pending at the expiration of those four weeks then within seven days from the close of those negotiations by the refusal of the creditors to accept or of the Court to approve the composition or scheme the official receiver shall continue to be the assignee of the property of the insolvent. 7. Provided that the creditors or the committee of inspection (if so authorized by resolution of the creditors) may at any subsequent time if they think fit appoint an assignee and on the appointment being made and certified the person appointed shall become assignee in the place of the official receiver.

Imp. § 21: 53 & 54 Vic. c. 71, § 4.

**Appointment and powers of committee of inspection. 20.** 1. The creditors qualified to vote may if they so desire at their first or any subsequent meeting by resolution appoint from among the creditors or the holders of general proxies or general powers of attorney from any creditors a committee of inspection for the purpose of superintending the administration of the insolvent's property by the assignee: Provided that a creditor or his attorney who is appointed a member of the committee of inspection shall not be qualified to act until such creditor has proved his debt and the proof has been admitted. The committee of inspection shall consist of not more than five or less than three persons. 2. The committee of inspection shall meet at such times as they shall from time to time appoint, and, failing such appointment, at least once a month; and the assignee, or any member of the committee, may also call a meeting of the committee as and when he thinks necessary. 3. The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting. 4. Any member of the committee may



resign his office by notice in writing signed by him and delivered to the assignee. 5. If a member of the committee becomes insolvent, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant. 6. Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting. 7. On a vacancy occurring in the office of a member of the committee, the assignee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution, appoint another creditor or other person eligible as above to fill the vacancy. 8. The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the committee is for the time being less than five, the creditors may increase that number so that it does not exceed five. 9. If there is no committee of inspection, any act or thing, or any direction or permission, by this Ordinance authorized or required to be done or given by the committee, may be done or given by the Court on the application of the assignee. 10. If there is a committee of inspection, the assignee may, by notice in writing, require the committee of inspection to meet, at a time and place to be specified, and express the opinion of the committee on any matter mentioned in such notice which requires the direction or permission or consent of the committee; and if the members of the committee do not meet at the time and place appointed and express the opinion of the committee, the assignee may take such action in the matter as may appear to him to be just, and shall be deemed to have obtained the direction or permission or consent of the committee of inspection to such action. The notice shall be posted to each member of the committee not less than four clear days before the day of meeting.

Imp. § 22; 53 & 54 Vic. c. 71, § 5.

**Power to accept composition or scheme after adjudication of insolvency.**

21. 1. Where a debtor is adjudged insolvent the creditors may, if they think fit at any time after the adjudication, by a resolution passed by a majority in number and three-fourths in value of all the creditors who have proved, resolve to entertain a proposal of the debtor for a composition in satisfaction of the debts due to them under the insolvency, or for a scheme of arrangement of the insolvent's affairs, and thereupon the same proceedings shall be taken, and the same consequences shall ensue, as in the case of a composition or scheme accepted before adjudication. 2. If the Court approves the composition or scheme, it may make an order annulling the insolvency and vesting the property of the insolvent in him or in such other person as the Court may appoint, on such terms and subject to such conditions, if any, as the Court may declare. 3. If default is made in payment of any instalment due in pursuance of such composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, adjudge the debtor insolvent and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged insolvent under this subsection, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the insolvency.

Imp. § 23; 53 & 54 Vic. c. 71, § 6.

*Control over person and property of debtor.*

**Duties of debtor as to discovery and realization of property.** 22. 1. Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require. 2. He shall give such inventory of his property, such list of his creditors and debtors and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the official receiver, special manager, or assignee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the official receiver, special manager, or assignee, or may be prescribed by general rules, or may be directed by the Court

by any special order or orders made in reference to any particular case or made on the occasion of any special application by the official receiver, special manager, assignee, or any creditor or person interested. 3. He shall, if adjudged insolvent, aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors. 4. If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property which is divisible amongst his creditors under this Ordinance, and which is for the time being in his possession or under his control, to the official receiver, or to the assignee, or to any person authorized by the Court to take possession of it, he shall, in addition to any other punishment to which he may be liable, be guilty of a contempt of court, and may be punished accordingly.

Imp. § 24.

**Arrest of debtor under certain circumstances. 23.** 1. The Court may, by warrant addressed to the Registrar, or any marshal, constable, or prescribed officer of the Court, cause a debtor to be arrested, and any books, papers, money, and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Court may order under the following circumstances: a) If, after an insolvency notice has been issued under this Ordinance or after presentation of an insolvency petition by or against him, it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding payment of the debt in respect of which the insolvency notice was issued, or of avoiding service of an insolvency petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in insolvency against him; or b) If, after presentation of an insolvency petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or assignee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents, or writings, which might be of use to his creditors in the course of his insolvency; or c) If, after service of an insolvency petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of twenty-four dollars, without the leave of the official receiver or assignee; or d) If without good cause shown, he fails to attend any examination ordered by the Court; Provided that no arrest upon an insolvency notice shall be valid and protected unless the debtor, before or at the time of his arrest, has been or is served with such insolvency notice. 2. No payment or composition made or security given after an arrest made under this section shall be exempt from the provisions of this Ordinance relating to fraudulent preferences.

Imp. § 25; 53 & 54 Vict. c. 71, § 7.

**Re-direction of debtor's letters. 24.** Where a receiving order is made against a debtor, the Court, on the application of the official receiver or assignee, may from time to time order that, for such time, not exceeding three months, as the Court thinks fit, post letters addressed to the debtor at any place or places mentioned in the order for re-direction shall be re-directed, sent, or delivered by the Postmaster General, or the officers acting under him, to the official receiver or assignee or otherwise as the Court directs, and the same shall be done accordingly.

Imp. § 26.

**Discovery of debtor's property. 25.** 1. The Court may, on the application of the official receiver or assignee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, his dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property. 2. If any person so summoned, after having been tendered a reasonable sum for his travelling expenses and attendance, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination. 3. The Court may examine upon oath, either by word of mouth or by written interrogatories, any person so brought



before it concerning the debtor, his dealings or property. 4. If any person, on examination before the Court, admits that he is indebted to the debtor, the Court may, on the application of the official receiver or assignee, order him to pay to the official receiver or assignee, at such time and in such manner as to the Court may seem expedient, the amount admitted or any part thereof, either in full discharge of the whole amount in question or not, as the Court may think fit, with or without costs of the examination. 5. If any person, on examination before the Court, admits that he has in his possession any property belonging to the debtor, the Court may, on the application of the official receiver or assignee, order him to deliver to the official receiver or assignee such property or any part thereof, at such time, and in such manner, and on such terms as to the Court may seem just. 6. The Court may, if it thinks fit, order that any person who, if in the Colony, would be liable to be brought before it under this section shall be examined in any place out of the Colony.

Imp. § 27.

*Discharge of insolvent.*

**Order of discharge. 26.** 1. An insolvent may, at any time after being adjudged insolvent, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the insolvent is concluded. The application shall be heard in open Court. 2. On the hearing of the application the Court shall take into consideration a report of the official receiver as to the insolvent's conduct and affairs (including a report as to the insolvent's conduct during the proceedings under his insolvency) and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property: Provided that the Court shall refuse the discharge in all cases where the insolvent has committed any misdemeanour under section 222, section 223, section 224 or section 225 of the *Indictable Offences Ordinance, 1893*, or any other misdemeanor connected with his insolvency or any felony connected with his insolvency, unless for special reasons the Court otherwise determines, and shall, on proof of any of the facts hereinafter mentioned, either: i) Refuse the discharge; or ii) Suspend the discharge for a period of not less than two years; or iii) Suspend the discharge until a dividend of not less than fifty cents in the dollar has been paid to the creditors; or iv) Require the insolvent as a condition of his discharge to consent to judgment being entered against him by the official receiver or assignee as the case may be for any balance or part of any balance of the debts provable under the insolvency which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the insolvent in such manner and subject to such conditions as the Court may direct; but execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the insolvent has since his discharge acquired property or income available towards payment of his debts. Provided that if any at time after the expiration of two years from the date of any order made under this section the insolvent shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit. 3. The facts hereinbefore referred to are: a) That the insolvent's assets are not of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible; b) That the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position for the three years immediately preceding his insolvency; c) That the insolvent has continued to trade after knowing himself to be insolvent; d) That the insolvent has contracted any debt provable in the insolvency without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it; e) That the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities; f) That the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living, or

by gambling, or by culpable neglect of his business affairs; g) That the insolvent has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him; h) That the insolvent has within three months preceding the date of the receiving order incurred unjustifiable expense by bringing a frivolous or vexatious action; i) That the insolvent has within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors; j) That the insolvent has within three months preceding the date of the receiving order incurred liabilities with a view of making his assets equal to fifty cents in the dollar on the amount of his unsecured liabilities; k) That the insolvent has on any previous occasion been adjudged insolvent, or made a composition or arrangement with his creditors; l) That the insolvent has been guilty of any fraud or fraudulent breach of trust. 4. For the purposes of this section an insolvent's assets shall be deemed of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities when the Court is satisfied that the property of the bankrupt has realized, or is likely to realize, or with due care in realization might have realized, an amount equal to fifty cents in the dollar on his unsecured liabilities, and a report by the official receiver or the assignee shall be prima facie evidence of the amount of such liabilities. 5. For the purposes of this section the report of the official receiver shall be prima facie evidence of the statements therein contained. 6. Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the Court may hear the official receiver and the assignee (if any) and may also hear any creditor. At the hearing the Court may put such questions to the debtor and receive such evidence as it may think fit. 7. The powers of suspending and of attaching conditions to an insolvent's discharge may be exercised concurrently. 8. A discharged insolvent shall, notwithstanding his discharge, give such assistance as the assignee may require in the realization and distribution of such of his property as is vested in the assignee, and if he fails to do so he shall be guilty of a contempt of court; and the Court may also, if it thinks fit, revoke his discharge but without prejudice to the validity of any sale, disposition, or payments duly made or thing duly done subsequent to the discharge but before its revocation. 9. Where the insolvent is discharged subject to the condition that judgment shall be entered against him under this section or subject to any other conditions as to his after-acquired property or income, it shall be his duty, until the judgment or condition is satisfied, from time to time to give the official receiver or assignee such information as he may require with respect to his after-acquired property or income, and not less than once a year to file with the official receiver or assignee a statement showing the particulars of any property or income which he may have acquired subsequent to his discharge.

Imp. § 28; 53 & 54 Vic. c. 71, § 8. A discharge suspended. — *In re McGowan & Co., Ex parte McGowan*, (9th March, 1901); *In re Farnum*, (13th June, 1904); *In re Foo, Ex parte Foo*, (8th September, 1906). Discharge granted. — *In re Jansen*, (24th January, 1903). Unconditional discharge refused. — *In re Menezes* (30th January, 1909).

**Fraudulent settlement.** 27. In either of the following cases, that is to say: 1. In the case of a settlement made before and in consideration of marriage where the settlor is not, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement; or 2. In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not, at the date of his marriage, any estate or interest (not being money or property of or in right of his wife); if the settlor is adjudged insolvent or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors or was unjustifiable, having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

Imp. § 29.

**Effect of order of discharge.** 28. 1. An order of discharge shall not release the insolvent: a) From any debt on a recognizance or from any debt with which the insolvent may be chargeable at the suit of the Crown or the Colony, or of any person,



for any offence against a statute relating to any branch of the public revenue, or at the suit of any public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Attorney-General certifies in writing his consent to his being discharged therefrom; or b) From any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or c) From any debt or liability whereof he has obtained forbearance by any fraud to which he was party; or d) From any liability under a judgment against him in an action for seduction or under an affiliation order or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability. 2. An order of discharge shall release the insolvent from all other debts provable in insolvency. 3. An order of discharge shall be conclusive evidence of the insolvency and of the validity of the proceedings therein; and in any proceedings that may be instituted against an insolvent who has obtained an order of discharge in respect of any debt from which he is released by the order, the insolvent may plead that the cause of action occurred before his discharge, and may give this Ordinance and the special matter in evidence. 4. An order of discharge shall not release any person who, at the date of the receiving order, was a partner or co-trustee with the insolvent or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

Imp. § 30; 53 & 54 Vic. c. 71, § 10. See *McEwin v. Rodney*, (24th February, 1900).

## *Part II. Disqualifications of Insolvent.*

**Disqualifications of insolvent.** 29. 1. Where a debtor is adjudged insolvent, he shall, subject to the provisions of this Ordinance, be disqualified for: a) Being elected to, or sitting or voting in, the Court of Policy, or to or in the Combined Court, or in any committee thereof; or b) Being appointed or acting as a justice of the peace; or c) Being elected to, or holding, or exercising the office of mayor or town councillor, or member of a village council; or d) Being elected to, or holding, or exercising the office of member of any sanitary authority or vestry. 2. The disqualifications to which an insolvent is subject under this section shall be removed and cease if and when: a) The adjudication of insolvency against him is annulled; or b) He obtains from the Court his discharge with a certificate to the effect that his insolvency was caused by misfortune without any misconduct on his part. 3. The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal. 4. No disqualification arising under the *Insolvency Ordinance, 1884*, or this section, shall exceed a period of five years from the date of any discharge which may have been granted or may hereafter be granted under this Ordinance.

Imp. § 32; 53 & 54 Vic. c. 71, § 9. An undischarged insolvent may sue for personal labour and services performed by him. — *Martins v. Heard*, (16th January, 1892), 2 L.R. (N.S.) 13.

**Vacating office.** 30. If a person is adjudged insolvent whilst holding the office of mayor, town councillor, or member of a village council, sanitary authority, or vestry, his office shall thereupon become vacant.

Imp. § 34.

**Power to the Court to annul adjudication in certain cases.** 31. 1. Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved, to the satisfaction of the Court, that the debts of the insolvent are paid in full, the Court may, on the application of any person interested, by order, annul the adjudication. 2. Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official receiver, assignee, or other person acting under their authority, or by the Court, shall be valid, but the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, revert to the debtor for all his estate or interest therein, on such terms and subject to such condition, if any, as the Court may declare by order. 3. Notice of the order annulling an adjudication shall forthwith be gazetted and published in a newspaper.

Imp. § 35. Where all of the creditors consent an order annulling adjudication may be made, although the debts have not been paid in full. — *In re Ross, Ex parte Ross*, (8th February, 1902).

**Meaning of payment in full. 32.** For the purposes of this Part of this Ordinance, any debt, disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court may approve, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

Imp. § 36.

### *Part III. Administration of Property.*

#### *Proof of debts.*

**Debts provable in insolvency. 33.** 1. Demands in the nature of unliquidated damages arising from obligations *ex delicto* or quasi *ex delicto* or otherwise than by reason of a contract, promise, or breach of duty or breach of trust shall not be provable in insolvency. 2. A person having notice of any act of insolvency available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice. 3. Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in insolvency. 4. An estimate shall be made by the assignee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value. 5. Any person aggrieved by any estimate made by the assignee as aforesaid may appeal to the Court. 6. If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall for the purposes of this Ordinance, be deemed to be a debt not provable in insolvency. 7. Where the liability of the debtor depends on questions of fact or of law which are in dispute, the assignee may state such questions in writing to the Court, and the Court shall thereupon proceed to determine such questions in the prescribed manner. 8. If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed before the Court, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in insolvency. 9. "Liability" shall, for the purposes of this Ordinance, include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth (other than an obligation arising *ex delicto* or quasi *ex delicto* where the amount of damages is still unliquidated) on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement, or undertaking to pay, or any obligation to pay or capable of resulting in the payment of money or money's worth, whether the payment is, as respects amount fixed or unliquidated, as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies, and, as to mode of valuation capable of being ascertained by fixed rules, or as matter of opinion.

Imp. § 37. See *In re Mendonca*, (9th January 1904); *In re Van Sertima*, (23d July 1904).

**Counter claims. 34.** Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order is made under this Ordinance and any other person proving or claiming to prove a debt under such receiving order an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set-off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor, notice of an act of insolvency committed by the debtor, and available against him.

Imp. § 38.

**Rules as to proof of debts. Second Schedule. 35.** With respect to the mode of proving debts, the right of proof by secured and other creditors the admission and



rejection of proofs, and the other matters referred to in the second Schedule, the rules in that Schedule shall be observed.

**Imp. § 39.** A creditor compelled to protect his claim against the estate in Court is entitled to costs if successful. — *Farnum v. Administrator-General*, (11th June, 1892), 2 L.R. (N.S.) 108.

**Secured creditors. 36.** 1. Any existing law or Ordinance to the contrary notwithstanding, any secured creditor may with the consent of the assignee and the approval of the official receiver if he is not assignee, but without any sentence or order of the Court being obtained, realize any moveable property upon which his security exists if the same is unaffected by any other security, by selling the same at public auction, or by tender after a notice of such intended sale or calling for tenders has been inserted in the *Gazette* and one newspaper for three successive Saturdays. 2. The assignee, with the approval of the official receiver if he is not assignee, if more creditors than one hold securities affecting the same property or if he deems it inexpedient to consent under the preceding subsection, or the official receiver withholds his approval, shall without any sentence or order of the Court being necessary realize such property by selling the same at public auction or by tender after notice of such intended sale or calling for tenders has been inserted in the *Gazette* and one newspaper, for three successive Saturdays, and shall distribute the proceeds of sale in accordance with section 37 of this Ordinance, after making the payments thereout in that section specified. The assignee, with the approval of the official receiver if he is not assignee may, with leave of the Court, transport or transfer such property to any secured creditor having a claim thereon, and may set off wholly or in part as the case may be, the claim of such creditor against the purchase money thereof. 3. Any secured creditor who is dissatisfied with any intended action of the assignee or with any action of the official receiver in dealing with the property in respect of which security is given may apply to the Court to issue directions to the assignee in respect of the rights of such secured creditor and the mode in which such property shall be dealt with.

**Priority of debts. 37.** 1. In the distribution of any assets of an insolvent at any time being distributed the assignee, after paying thereout the expenses properly incurred in realizing the same or in carrying on the plantation or business from which the same are obtained, all fees and commissions relating thereto and any costs, charges, and expenses payment whereof is prescribed or allowed by the Court, shall pay thereout in the order hereinafter specified the following debts or such of them or such part of any of them as have not previously been paid, namely: a) All such taxes, imposts, dues, debts, and sums of money other than fines or penalties due to the Crown or the Colony at the date of the receiving order (other than sums payable by instalments and secured under any Ordinance by preferent lien on the assets then being distributed or on the plantation or business from the sale or carrying on of which they have been obtained), as have become due and payable within twelve months next before the date of the receiving order; b) All sums due and payable to the Crown or Colony at the date of the receiving order (including sums due in respect of immigration) forming part of a sum payable by instalments and secured under the provisions of any Ordinance by a preferent lien on the assets then being distributed or the plantation or business from the sale or carrying on of which they have been obtained, whether such preferent lien affects such assets, plantation, or business alone or also affects other property of the insolvent; c) All municipal, village, or local rates, for which such assets, plantation, or business may be liable and executable, due at the date of the receiving order and which have become due and payable within the rating year in which the receiving order has been made; d) If such assets were obtained from the sale or carrying on of any plantation or business, salaries of the servants of the plantation, including the engineer if employed at a salary or of the clerks employed in the business for the three months preceding the receiving order; e) Legal mortgages and special conventional mortgages, affecting the assets then being distributed or the plantation or business from the sale or carrying on of which they have been obtained, (whether such mortgages affect such assets, plantation, or business alone or also affect other property of the insolvent.) such mortgages ranking between themselves in accordance with the priority given to each by the existing law, and in default of any different rule of law as to priority according to the order of their dates of origin; f) All wages or salary of any manager employed on any mining claim, woodcutting, or ballata bleeding business and all wages of any labourer or workman employed thereon in respect of services rendered to the insolvent

during four months before the date of the receiving order, and all wages of salesmen in retail provision shops and menial and other servants in respect of services rendered the insolvent for the two months before such date; g) General conventional mortgages according to the order of their dates; h) All other debts not hereinbefore mentioned, including in cases where part only of any debt or claim is entitled under the provisions hereinbefore contained, to priority of payment out of the assets then being distributed or any other undistributed assets, the remainder of such debt or claim. All such debts shall be paid *pari passu*. 2. Where any mortgage affects not only the assets at any time being distributed or the plantation, or business from the sale or carrying on of which such assets have been obtained, but also other property of the insolvent, and such assets and other property affected thereby are together more than sufficient to pay such mortgage in full and such mortgage has priority over or ranks equally with any mortgage affecting only such assets, plantation or business, the holder of the last mentioned mortgage shall be entitled to stand in the place of the holder of the first mentioned mortgage in respect of such other property to the extent to which the payment of such first mentioned mortgage debt has exhausted such assets. 3. If the property of the insolvent is insufficient to pay in full the debts in the foregoing class marked f such debts shall rank equally between themselves and shall abate in equal proportions between themselves. 4. In this section the term "legal mortgages" shall mean: a) The lien of the wife of an insolvent who has executed an antenuptial contract on all the insolvent's property in respect of the property secured by such contract in cases where the provisions relating to such contracts hereinafter contained have been complied with; b) The lien of any person who has been under the guardianship or curatorship of an insolvent, and of the heir of such person on all the insolvent's property in respect of maladministration or neglect of the estate of such person; c) The lien of the children of an insolvent by a deceased wife, to whom he was married in community of goods on all his property in respect of such of the property held in community during the marriage as devolved on them on their deceased parent's death; d) The lien of a landlord on any growing crop or moveables which are at the date of the receiving order on property rented from him by the insolvent in respect of arrears of rent due from the insolvent for the six months next before the date of the receiving order; e) The lien of a legatee as a security for his legacy on property to which the insolvent has succeeded as heir under a will. 5. No contract for the sale of any interest in immovable property or for any charge or incumbrance on any immoveable property, and no conventional mortgage, shall be of any force or give any right of preference which has not been completed by transport or mortgage duly passed before the Court or a Judge; except that the creditor may claim under his contract as a concurrent creditor against the debtor's estate. 6. No married woman shall in case of her husband's insolvency be entitled to claim as a creditor of his estate by reason of her antenuptial contract unless all the following provisions have been complied with, viz: a) The contract if made after the commencement of this Ordinance has been made in writing and duly deposited in the Registrar's Office or recorded therein within three months after the execution thereof or if made before the commencement of this Ordinance has been reduced to writing (if not so made) and duly deposited in the Registrar's Office or recorded therein not later than three months after such commencement; b) The money or other property affected by such contract and belonging to her at the date of the execution thereof has been clearly specified in such contract or an inventory annexed thereto, at such date, or in case of any contract made before the commencement of this Ordinance and not having any such specification therein or any inventory annexed thereto, in an inventory deposited or recorded not later than three months after such commencement; and c) A statutory declaration by two or more independent witnesses, testifying to the facts that the property specified in the contract or inventory to the contract is or was at the date of the contract the property of the woman to whose marriage such contract relates, that such property was at that date actually transferred, and that the value of such property is correctly specified in such contract or inventory has been duly deposited in the Registrar's Office or recorded therein along with the inventory or in cases where a contract having such specification therein has or a contract and inventory have been recorded before the commencement of this Ordinance not later than three months after such commencement. 7. No married woman shall in case of her husband's insolvency be entitled by reason of her antenuptial contract to any preferent claim on his estate for any money or other property acquired by



her during the marriage, unless an inventory thereof and a statutory declaration by two or more independent witnesses verifying the fact of such property still existing and how it has been acquired by her are deposited or recorded in the Registrar's Office within two months after the acquisition thereof and before any loan thereof to her husband, or within three months after the commencement of the Ordinance if acquired before such commencement, but her claim in respect thereof shall rank concurrently with the claims of all other unsecured creditors on his estate. 8. If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of six per cent. per annum on all debts proved in the insolvency. 9. In the case of partners, the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate. 10. Nothing in this section shall alter the effect of section 5 of the *Partnership Ordinance, 1900*, or prejudice the provisions of any Ordinance for the time being in force relating to friendly societies.

Imp. § 40; 51 & 52 Vic. c. 62, § 1. A contract for the purchase of land does not confer an absolute right to transport of the land, but only a right to compel the vendor to transport the land, provided the rights of the vendor's creditors are not interfered with. If the vendor is unable by reason of such rights being enforced, to pass transport, the purchaser can claim compensation from him. — *In re Andrews*, (19th September, 1904). The Placaat of Charles V, dated 4th October 1540, sec. 6, appears to be repealed by this Ordinance. A certain transaction between husband and wife held not to be in pursuance of an ante-nuptial agreement, and as merely creating the relation of debtor and creditor. — *De Souza v. De Souza*, (19th November, 1902). A general conventional mortgage is recognized by the Ordinance. — *In re Da Silva. Ex parte The Assignee*, (8th October, 1904).

**Preferential claim in case of apprenticeship.** 38. 1. Where, at the time of the presentation of the insolvency petition, any person is apprenticed or is an articulated clerk to the insolvent, the adjudication of insolvency shall, if either the insolvent or the apprentice or clerk gives notice in writing to the assignee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the insolvent as a fee, the assignee may, on the application of the apprentice or clerk or of some person on his behalf, pay such sum as the assignee, subject to an appeal to the Court, may think reasonable, out of the insolvent's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the insolvent under the indenture or articles before the commencement of the insolvency, and to the other circumstances of the case. 2. Where it appears expedient to the assignee, he may, on the application of any apprentice or articulated clerk or any person acting on behalf of such apprentice or articulated clerk instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

Imp. § 41.

*Property available for payment of debts.*

**Relation back to assignee's title.** 39. The insolvency of a debtor, whether the same takes place on the debtor's own petition or on that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of insolvency being committed on which a receiving order is made against him, or, if the insolvent is proved to have committed more acts of insolvency than one, to have relation back to, and to commence at, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition; but no insolvency petition, receiving order, or adjudication shall be rendered invalid by reason of any act of insolvency anterior to the debt of the petitioning creditor.

Imp. § 43.

**Description of property divisible amongst creditors.** 40. The property of the insolvent divisible amongst his creditors, and in this Ordinance referred to as the property of the insolvent, shall not comprise the following particulars: 1. Property held by the insolvent on trust for any other person. 2. The tools, if any, of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding ninety-six dollars

in the whole. But it shall comprise the following particulars: i) All such property as may belong to or be vested in the insolvent at the commencement of the insolvency, or may be acquired by or devolve on him before his discharge; ii) The capacity to exercise and to take proceedings for exercising all such powers in, or over, or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge; and iii) All goods being, at the commencement of the insolvency, in the possession, order, or disposition of the insolvent in his trade or business by the consent and permission of the true owner, under such circumstances that he is the reputed owner of such goods: Provided that things in action, other than debts due or growing due to the insolvent in the course of his trade or business, shall not be deemed goods within the meaning of this section: Provided also, that nothing in this section shall affect the rights of minors or persons under disability.

Imp. § 44. See *Mendonca v. Vieira*, (9th January, 1904).

*Effect of insolvency on antecedent transactions.*

**Restriction of rights of creditor in execution. 41.** 1. Where a creditor has issued execution against the goods or immoveable property of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the assignee, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any insolvency petition by or against the debtor or of the commission of any available act of insolvency by the debtor. 2. For the purposes of this Ordinance, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against immoveable property is completed by seizure and sale.

Imp. § 45.

**Duty of the marshal in respect of goods taken in execution by creditor. 42.** Where any goods of a debtor are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the marshal, that a receiving order has been made against the debtor, the marshal shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official receiver, but the cost of the proceedings up to and including the cost of execution shall be a first charge on the goods or money so delivered, and the official receiver or assignee may sell the goods or an adequate part thereof, for the purpose of satisfying the charge. 2. Where under an execution in respect of a judgment for a sum exceeding one hundred dollars, the goods of a debtor are sold or money is paid in order to avoid sale, the marshal shall deduct the costs of the execution including the taxed costs of the plaintiff from the proceeds of sale or the money paid, and retain the balance for fourteen days, and if, within that time, notice is served on him of an insolvency petition having been presented against or by the debtor, and a receiving order is made thereon or on any other petition of which the marshal has notice, the marshal shall pay the balance to the official receiver, or, as the case may be, the assignee, who shall be entitled to retain the same as against the execution creditor. 3. An execution levied by a seizure and sale of the goods of a debtor is not invalid by reason only of the same being an act of insolvency, and a person who purchases the goods in good faith under a sale by the marshal shall in all cases acquire a good title to them against the assignee.

Imp. § 46; 53 & 54 Vic. c. 71, §§ 11, 12.

**Effect of insolvency on certain settlements. 43.** 1. Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage, in right of his wife, shall, if the settlor becomes insolvent within two years after the date of the settlement, be void against the assignee, and shall, if the settlor becomes insolvent at any subsequent time within ten years after the date of the settlement, be void against the assignee, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed under such settlement on the execution thereof. 2. Any covenant or contract made in



consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming insolvent before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the assignee: Provided that if such money or property has been actually transferred or paid in contemplation of insolvency, the wife or children shall not be entitled to retain the same against the assignee, unless they or the parties claiming under them can prove that the settlor was, at the time of making the covenant or contract able to pay his debts in full, but they shall nevertheless be entitled to claim in respect of such covenant or contract concurrently with the other creditors, unless it appears to the Court that such covenant or contract was made in order to defeat and delay creditors or was unjustifiable, having regard to the state of the settlor's affairs at the time when such covenant or contract was entered into, and that the wife had notice, from the circumstances or otherwise, that such was the case. 3. Every settlement of any property made in contemplation of insolvency or with intent to delay, hinder, defeat, or defraud creditors, shall be void against any assignee and against every person who or any of whose remedies for the recovery of his debt shall or may be in any wise disturbed, hindered, delayed, defeated, or defrauded, any pretence, colour, or feigned consideration to the contrary notwithstanding: Provided always that this subsection shall not affect the validity of any settlement made in good faith and for valuable consideration in favour of any person not having at the date thereof any manner of notice or knowledge of such settlement having been made in contemplation of insolvency or with any such intent as aforesaid. 4. Where a settlement, covenant, or contract is void under this section against the assignee, the assignee shall have and exercise all necessary rights and powers for acquiring title to and possession of the money or property affected or purporting to be affected by such settlement, covenant, or contract. 5. "Settlement" shall, for the purposes of this section, include any conveyance or transfer of money or property.

**Imp. § 47.** The word "settlement" means a transfer or conveyance of property or money with the intention that the property or money should be preserved for the enjoyment of some person other than the transferor. — *In re Macedo*, Ex parte The Administrator-General, (14th June, 1902).

**Avoidance of preferences. 44.** 1. Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same is adjudged insolvent on an insolvency petition presented within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the assignee. 2. The fact that the debtor was pressed by his creditor shall not prevent the transaction being void, but in such case the Court, if it considers the insolvent's conduct was excusable, may direct that the transaction shall not affect his discharge. 3. This section shall not affect the rights of any person making title, in good faith and for valuable consideration, through or under a creditor of the insolvent.

**Imp. § 48.** See *In re De Souza*, (8th July, 1902, 16th August, 1902).

**Protection of bonâ fide transactions without notice. 45.** Subject to the preceding provisions of this Ordinance with respect to the effect of insolvency on an execution or attachment and with respect to the avoidance of certain settlements and preferences, nothing in this Ordinance shall invalidate, in case of an insolvency: 1. Any payment by the insolvent to any of his creditors; or 2. Any payment or delivery to the insolvent; or 3. Any conveyance or assignment by the insolvent for valuable consideration; or 4. Any contract, dealing, or transaction by or with the insolvent for valuable consideration: Provided that both the following conditions are complied with, namely: i) The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and ii) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into has not, at the time of the payment, delivery, conveyance, assignment, contract,

dealing, or transaction, notice of any available act of insolvency committed by the insolvent before that time.

Imp. § 49.

*Realization of property.*

**Possession of property by the assignee, etc.** 46. 1. The assignee shall, as soon as may be, take possession of the deeds, books, and documents of the insolvent, and all other parts of his property capable of manual delivery. 2. The assignee shall also take possession of the other property of the insolvent, and in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent shall be in the same position as if he were a receiver of the property appointed by the Court and the Court may on his application enforce such acquisition or retention accordingly. 3. The official receiver on taking possession of any property, shall, by himself or by any person authorized by him in writing, make a full and articulate inventory of such property. The inventory shall be made in the presence of one witness, and shall be signed by the person making such inventory and by the witness. The debtor or person giving up or delivering such property shall be bound to sign such inventory or state in writing on such inventory the particulars in which it is incorrect, in default whereof the official receiver shall apply to the Court for an order to compel him to do so. Such inventory shall be deposited as of record in the Registrar's Office. 4. Where any part of the property of the insolvent consists of stock, scrip, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it if he had not become insolvent. 5. Where any part of the property of the insolvent consists of things in action, such things shall be deemed to have been duly assigned to the assignee. 6. Any treasurer or other officer, or any banker, attorney, or agent of an insolvent, shall pay and deliver to the assignee all money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the insolvent or the assignee. If he does not, he shall be guilty of a contempt of court, and may be punished accordingly on the application of the assignee.

Imp. § 50. See *In re Teekah*, (17th July, 1901).

**Seizure of property of insolvent.** 47. Any person acting under warrant of the Court may seize any part of the property of an insolvent in the custody or possession of the insolvent or of any other person, and with a view to such seizure, may break open any house, building, or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to the Registrar or any marshal or any constable, who may execute it according to its tenor.

Imp. § 51.

**Appropriation of portion of pay or salary of insolvent to creditors.** 48. 1. Where an insolvent is an officer or clerk or otherwise employed or engaged in the civil service of the Crown or the Colony, the assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary as the Court, on the application of the assignee, with the consent of the Governor, may direct. Before making any order under this subsection, the Court shall communicate with the Government Secretary as to the amount, time, and manner of the payment to the assignee and shall obtain the written statement of the Government Secretary that the Governor consents to the terms of such payment. 2. Where an insolvent is in the receipt of a salary or income other than as aforesaid, or is entitled to any pay or pension or to any compensation, gratuity, or allowance granted by the Government, the Court, on the application of the assignee shall from time to time make such order as it may think just for the payment of such salary, income, pay, pension, compensation, gratuity, or allowance or of any part thereof, to the assignee to be applied by him in such manner as the Court may direct. 3. Nothing in this section shall take away or abridge any power of the Governor to dismiss an insolvent, or to declare the pension allowance of any insolvent to be forfeited.

Imp. § 53.

**Vesting and transfer of property.** 49. 1. Until an assignee is appointed the official receiver shall be the assignee for the purpose of this Ordinance and immediately on a debtor being adjudged insolvent, the property of the insolvent shall vest in



the assignee. 2. On the appointment of an assignee, the property shall forthwith pass to and vest in the assignee appointed. 3. The property of the insolvent shall pass from assignee to assignee including under that term the official receiver when he fills the office of assignee, and shall vest in the assignee for the time being during his continuance in office, without any transport, conveyance, assignment, or transfer whatever.

Imp. § 54.

**Disclaimer of onerous property. 50.** 1. Where any part of the property of the insolvent consists of lands of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the assignee, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within six months after the date of the receiving order, or at any time with leave of the Court, disclaim the property: Provided that where any such property has not come to the knowledge of the assignee within one month after such date, he may disclaim such property at any time within six months after he first became aware thereof. 2. The disclaimer shall operate to determine, as from the date of such disclaimer, the rights, interests, and liabilities of the insolvent and his property in or in respect of the property disclaimed, and shall also discharge from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the insolvent and his property and the assignee from liability, affect the rights or liabilities of any other person. 3. The assignee shall not be entitled to disclaim a lease without the leave of the Court, except in any case, which may be prescribed by general rules, and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders, with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the Court may think just. 4. The assignee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the assignee by any person interested in the property requiring him to decide whether he will disclaim or not, and the assignee has, for a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and, in case of a contract, if the assignee after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it. 5. The Court may on the application of any person who is, as against the assignee, entitled to the benefit or subject to the burden of a contract made with the insolvent, make an order rescinding the contract, on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the insolvency. 6. The Court may, on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Ordinance in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or any person on his behalf and for his benefit and on such terms as the Court thinks just; and, on any such vesting order being made, the moveable property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose and, the Registrar is hereby directed to pass the necessary conveyances of any immoveable property: Provided always that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the insolvent, as under-lessee, except upon the terms of making such person subject to the same liabilities and obligations as the insolvent was subject to under the lease in respect of the property at the date when the insolvency petition was filed; or (if the Court thinks fit) the person in whose favour the vesting order is made may be made subject only to the same liabilities and obligations as if the lease had been assigned to him

at the date when the insolvency petition was filed, and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order; and any under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in the property; and if there is no person claiming under the insolvent who is willing to accept an order upon such terms, the Court shall have power to vest the insolvent's estate and interest in the property in any person liable, either personally or in a representative character and either alone or jointly with the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the insolvent. 7. Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the insolvent to the extent of the injury, and may accordingly prove the same as a debt under the insolvency.

Imp. § 55; 53 & 54 Vic. c. 71, § 13.

**Powers of the assignee to deal with property.** 51. Subject to the provisions of this Ordinance and to any general rules, the assignee may do all or any of the following things: 1. Sell all or any part of the property of the insolvent (including the goodwill of the business, if any, and the book debts due or growing due to the insolvent), by public sale or by tender, with power to transfer the whole thereof to any person or company, or to sell the same in parcels; 2. Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof. 3. Prove, rank, claim, and draw a dividend in respect of any debt due to the insolvent; and 4. Exercise any powers the capacity to exercise which is vested in the assignee under this Ordinance, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Ordinance.

Imp. § 56.

**Powers exerciseable with permission of committee of inspection.** 52. 1. The assignee with the permission of the committee of inspection may do all or any of the following things: a) Carry on the business of the insolvent, so far as may be necessary for the beneficial winding-up of the same; b) Bring, institute, or defend any action or other legal proceeding relating to the property of the insolvent; c) Employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection; d) Accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the committee may think fit; e) Mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts; f) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the insolvent and any person who may have incurred any liability to the insolvent, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on; g) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the insolvency; h) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the insolvent made or capable of being made on the assignee by any person or by the assignee on any person; and i) Divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot be readily or advantageously sold. 2. The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases. Provided always that the assignee shall not carry on any business of the insolvent except with the permission of the committee of inspection expressly given or, in the absence of such committee, with the consent of the Court, and shall not carry on any plantation in cultivation except with the permission of the committee of inspection expressly given if one is appointed, and of the Court: Provided, also that every plantation in cultivation shall while it remains under the administration of the assignee be conducted in the prescribed manner and subject to the directions of the Court.

Imp. § 57.



*Distribution of property.*

**Declaration and distribution of dividends. 53.** 1. Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts. 2. The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors unless the assignee satisfies the committee of inspection or the Court that there is sufficient reason for postponing the declaration to a later date. 3. Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months. 4. No dividend, except a final dividend, shall be declared of less amount than one cent in the dollar. Where the amount finally to be divided will give less than one-quarter of one cent in the dollar, no dividend shall be declared and the administration shall be closed. 5. Before declaring a dividend, the assignee shall publish in the prescribed manner, a notice of his intention to do so, and shall also send a reasonable notice thereof to each creditor mentioned in the insolvent's statement, who has not proved his debt. 6. When the assignee has declared a dividend, he shall publish a notice stating the amount of the dividend and when and how it is payable and shall prepare for the inspection of creditors a statement in the prescribed form as to the particulars of the estate.

Imp. § 58.

**Joint and separate dividends. 54.** 1. Where one partner of a firm is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts. 2. Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court, on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the assignee between the joint and separate properties, regard being had to the work done for and the benefit received by, each property.

Imp. § 59.

**Provision for creditors residing at a distance. 55.** In the calculation and distribution of a dividend, the assignee shall make provision for debts provable in insolvency appearing from the insolvent's statements, or otherwise, to be due to persons resident in places so distant from the Colony that in the ordinary course of communication, they have not had sufficient time to tender their proofs or to establish them if disputed, and also for debts provable in insolvency, the subject of claims not yet determined. He shall also make provision for any disputed proofs or claims and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand.

Imp. § 60.

**Right of creditor who does not prove debt before declaration of dividend. 56.** Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the assignee any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Imp. § 61. As to circumstances when relief is granted where a secured creditor proves as unsecured, see *In re Mendonca*, (9th January, 1904). As to solicitor's lien, see *In re Winter Gold Mine, Ltd.*, (26th April, 1901).

**Final dividend. 57.** 1. When the assignee has realized all the property of the insolvent, or so much thereof as can, in the joint opinion of himself and the committee of inspection, be realized without needlessly protracting the assigneeship, he shall declare a final dividend but before doing so, he shall give notice, in the prescribed manner, to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that, if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. 2. After the expiration of the time so limited, or, if the Court, on application by any such claimant, grants him further time for establishing his claim, then on the expiration of such further

time, the property of the insolvent shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

Imp. § 62.

**Barring of action for dividend. 58.** No action for a dividend shall lie against the assignee, but if he refuses to pay any dividend, the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Imp. § 63.

**Procedure where property is withheld under claim of right. 59.** 1. Where the assignee claims property belonging to the insolvent, and possession of the same is refused or withheld by any person under a bona fide claim of right which raises any question of law or of fact, the assignee may apply, in the prescribed manner, to the Court, and the Court may either order the immediate delivery of such property to the assignee or, when the question cannot be properly decided in a summary way, may order that a suit be instituted in the ordinary manner. 2. When any property is so withheld as aforesaid, and the circumstances appear to the Court to require immediate steps to be taken to preserve the property, the Court may make an interim order authorizing the assignee to take possession of such property under further order therein.

See note to § 37. *supra*.

**Procedure where property is claimed by third person. 60.** When any person lays claim to any property which is in the custody or possession of the assignee such person may apply to the Court, in the prescribed manner, to issue directions to the assignee.

**Employment of and allowance to insolvent for maintenance. 61.** 1. The assignee with the permission of the committee of inspection may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade, if any, of the insolvent for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the assignee may direct. 2. The assignee with the permission of the committee of inspection may from time to time make such allowance as he may think just to the insolvent out of his property for the support of the insolvent and his family, or in consideration of his services, if he is engaged in winding up his estate, but any such allowance may be reduced by the Court on the application of any creditor. The assignee shall report the amount of such allowance to the Court.

Imp. § 64.

**Right of insolvent to surplus. 62.** The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Ordinance provided, and of the costs, charges, and expenses of the proceedings under the insolvency petition.

Imp. § 65.

#### *Part IV. General Duties of the Official Receiver in Insolvency.*

**Status of official receiver. 63.** 1. The duties of the official receiver shall have relation both to the conduct of the debtor and the administration of his estate. 2. The official receiver may, for the purpose of affidavit verify proofs, petitions, or other proceedings under this Ordinance, administer oaths. He may also take declarations verifying proofs. 3. All sections of this Ordinance referring to an assignee shall, unless the context otherwise requires or the Ordinance otherwise provides, include the official receiver when acting as assignee. 4. An assignee shall supply the official receiver with such information and give him such access to, and facilities for, inspecting the insolvent's books and documents and generally shall give him such aid as may be requisite for enabling the official receiver to perform his duties under this Ordinance.

Imp. § 68.

**Duties as regards debtor's conduct. 64.** As regards the debtor, it shall be the duty of the official receiver: 1. To investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanour under any Ordinance for the time being in force providing for the punishment of fraudulent debtors, or under this Ordinance, or under any amendment thereof, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge. 2. To make such other reports concerning the conduct of the debtor as the Court may direct.

Imp. § 69.



**Duty as regards administration of estate. 65.** 1. As regards the estate of a debtor it shall be the duty of the official receiver: a) Pending the appointment of an assignee to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof; b) To authorize a special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary to do so; c) To summon and preside at the first meeting of creditors; d) To issue forms of proxy for use at the meetings of creditors; e) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs; f) To advertise the receiving order, the date of the first meeting of creditors and of the debtor's public examination, and such other matters as it may be necessary to advertise; g) To act as assignee during any vacancy in the office of assignee; and h) Where the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions and at the expense of the estate, employ some person or persons to assist the debtor in the preparation of such statement. 2. Where a receiving order is made or the official receiver is appointed interim receiver, the official receiver shall immediately take possession of the property of the debtor. 3. For the purpose of his duties as interim receiver or manager the official receiver shall have all powers necessary to protect the estate as if the same vested in him, but shall as far as practicable consult the wishes of the creditors with respect to the management of the debtor's property and may for that purpose, if he thinks it advisable summon meetings of the persons claiming to be creditors and shall not save as provided by subsection 1, h, of this section, unless the Court otherwise orders, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods.

Imp. § 70.

**Right to apply to the Court for directions. 66.** The official receiver may apply to the Court, in the prescribed manner, for directions in relation to any matter arising in insolvency.

## *Part V. Officers and Assignees in Insolvency.*

### *Officers.*

**Appointment of certain officers. 67.** 1. The Registrar may, with the consent of the Governor, appoint any officer in the office of the Registrar to perform the duties of the Registrar under this Ordinance or any general rules. 2. The Administrator General of British Guiana shall be the official receiver under this Ordinance, but the *Administrator-General's, Ordinance, 1887*, shall not apply to any case coming under this Ordinance. 3. The Governor may from time to time, by order, direct that any officer mentioned in the order shall be capable of discharging the duties of the Administrator-General under this Ordinance, or any general rules, either in any particular county, or for any particular time during any temporary vacancy in the office, or during the temporary absence of the Administrator-General. 4. The Administrator-General may, with the consent of the Governor, depute any of the officers in the Office of the Administrator-General to perform any of the duties of his office under this Ordinance, whenever he is unable to perform them in person through illness or otherwise.

Imp. § 71. The name "official receiver" is substituted for "Administrator-General."

### *Appointment, remuneration, and removal of assignee.*

**Official name of assignee. 68.** 1. The assignee shall be called by the name of "the assignee of the property of (inserting the name of the debtor) an insolvent" and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office. 2. The creditors may, if they think fit, appoint more persons than one to the office of assignee, and when more persons than one are appointed, they shall declare whether any act required or authorized to be done by the assignee is to be done by all or any one or more of such persons; but all such persons are in this Ordinance included under the term "assignee," and shall be joint possessors or joint owners as the case may be of the property of the debtor. 3. The creditors may also appoint persons to act as assignees in succession in the event of one or more of the persons

first named declining to accept the office of assignee, or failing to give security, or being objected to by the official receiver.

Imp. §§ 83, 84.

**Remuneration of assignee. 69.** 1. Where the creditors appoint any person to be assignee of a debtor's estate, his remuneration, if any, shall be fixed by an ordinary resolution of the creditors, or, if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realized by him after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend. 2. If one-fourth in number or value of the creditors dissent from the resolution, or the debtor satisfies the Court that the remuneration is unnecessarily large, the Court shall fix the amount of the remuneration. 3. The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the debtor's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover. 4. Where an assignee so appointed acts without any remuneration he shall be allowed out of the insolvent's estate such proper expenses incurred by him in or about the proceedings of the insolvency, as the creditors may with the sanction of the official receiver approve. 5. An assignee shall not, under any circumstances whatever, make any arrangement for or accept from the debtor, or any solicitor, auctioneer, or any other person who may be employed about an insolvency, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or assignee to the debtor or insolvent, or to any solicitor or other person who may be employed about an insolvency.

Imp. § 72; 53 & 54 Vic. c. 71, § 15.

**Allowance and taxation of costs. 70.** 1. Where an assignee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by this Ordinance or general rules to be performed by himself. 2. Where the assignee is a solicitor, he may contract that the remuneration for his services as assignee shall include all professional services. 3. All bills and charges of barristers, solicitors, managers, accountants, auctioneers, brokers, and other persons, not being assignees, shall be taxed by the Registrar or prescribed officer, and no payments in respect thereof shall be allowed in the assignee's accounts without proof of such taxation having been made. The Registrar or prescribed officer shall satisfy himself, before passing such bills and charges, that the employment of such barristers, solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned. The sanction required under this section for the employment of barristers, solicitors or other persons must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shewn that no undue delay took place in obtaining the sanction. 4. Every such person shall, on request by the assignee (which request the assignee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the proper officer for taxation, and if he fails to do so within seven days after receipt of the request, or such further time as the Court, on application, may grant, the assignee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited, as well against the assignee personally as against the estate.

Imp. § 73.

**Vacation of office of assignee by insolvency. 71.** If a receiving order is made against an assignee, he shall thereby vacate his office of assignee.

Imp. § 85.

**Removal of assignee. 72.** 1. The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove an assignee appointed by them; and may, at the same or any subsequent meeting, appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of the assignee. 2. If the official receiver is of opinion that an assignee appointed by the creditors is guilty of misconduct or fails to perform his duties under this Ordinance, or is by reason of lunacy or continued sickness or absence incapable of performing his duties or that his connection with or relation



to the insolvent or his estate or any particular creditor might make it difficult for him to act with impartiality in the interest of the creditors generally, or if such assignee in any other matter has been removed from office on the ground of misconduct, the official receiver may remove such assignee from his office, but if the creditors by ordinary resolution disapprove of his removal, he or they may appeal against it to the Court.

Imp. § 86; 53 & 54 Vic. c. 71, § 19.

**Proceedings in case of vacancy in office of assignee. 73.** 1. If a vacancy occurs in the office of an assignee, the creditors in a general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment. 2. The official receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy. 3. If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the official receiver shall become assignee; but in such case the creditors or committee of inspection shall have the same power of appointing an assignee as in the case of a first appointment. 4. During any vacancy in the office of assignee, the official receiver shall act as assignee.

Imp. § 87.

*Powers and duties of assignee.*

**Voting powers of assignee. 74.** The vote of the assignee or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the assignee.

Imp. § 88.

**Insolvency Estates' Account. 75.** 1. An Account called "the Insolvency Estates' Account" shall be kept by the official receiver with the Receiver-General, and all moneys received by the official receiver as assignee or from assignees shall be paid to that account. 2. Every assignee shall, in such manner and at such times as may be prescribed, pay the money received by him to the Insolvency Estates' Account at the official receiver's office, and the official receiver shall furnish him with a certificate of receipt of the money so paid which shall be an effectual discharge to him in respect thereof. 3. No commission shall be payable to the official receiver on moneys received by an assignee and paid into a bank as hereinafter provided: but the official receiver shall at such times as may be prescribed, and in any event not less than once in every six months, examine the banking account of the assignee and call the assignee to account for any misfeasance or neglect in connection therewith, and for each such examination the prescribed fee shall be paid.

Imp. § 74.

**Rules as to keeping of account at bank. 76.** 1. Where a committee of inspection is appointed, if it appears to the committee of inspection that, for the purpose of carrying on the debtor's business or of obtaining advances, or because of the probable amount of the cash balance, or if the committee satisfies the official receiver that for any other reason it is for the advantage of the creditors that the assignee should have an account with a bank, the Administrator-General may, on the application of the committee of inspection, authorize the assignee to make his payments into and out of such bank as the committee may select. 2. Such account shall be opened and kept by the assignee in the name of the debtor's estate; and any interest receivable in respect of the account shall be part of the assets of the estate. 3. The assignee shall make his payments into and out of such bank in the prescribed manner. 4. Subject to any general rules relating to small insolvencies under Part. VII, where the debtor, at the date of the receiving order, has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the official receiver for the safety of the account or other sufficient cause, withdraws the account. 5. If an assignee at any time retains for more than ten days a sum exceeding two hundred and forty dollars or such other amount as the Court in any particular case may authorize him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall have no claim for remuneration, and may be removed from his office by the Court and shall be liable to pay any expenses occasioned by reason of his default. 6. All payments out of money standing to the credit of the Insolvency Estates' Account shall be made by the official receiver in the prescribed manner.

Imp. § 74.

**Prohibition of assignee paying into private account. 77.** No assignee in an insolvency or under any composition or scheme of arrangement shall pay any sums received by him as assignee into his private banking account.

Imp. § 75.

**Duty of assignee to account to the Registrar. 78.** 1. Every assignee shall, at such times as may be prescribed, but not less than once in each period of six months during his tenure of office, send to the Registrar an account of his receipts and payments as such assignee. 2. The accounts shall be in the prescribed form, shall be made in duplicate and shall be verified by a declaration in the prescribed form. 3. a) On receipt of the account with the books, documents, and vouchers, the Registrar shall forthwith cause due notice thereof to be published for four successive Wednesdays, calling upon all persons interested to examine the same and to state their objections, if any, in writing, within one month from the date when the notice was first published; b) The account and the books, documents, and vouchers shall be open during office hours to the inspection of all persons interested in the estate for the said period, without the payment of any fee; c) Any person interested objecting to the account shall state his objection in writing, and may file the same in the Registrar's Office without the payment of any fee. After the expiration of the said period the Registrar shall place before the accountant to the Court the account, books, documents, and vouchers, in the order in which they have been deposited with him and the objections thereto, if any, and if any document or voucher is found deficient or wanting, the accountant to the Court shall give notice thereof in writing to the assignee who shall be bound, within fourteen days after the receipt of such notice, to furnish the document or voucher required, or show sufficient cause to the contrary; on pain, in default thereof, of having the items which are unvouched or unsupported struck out of his account; d) The accountant to the Court shall thereupon examine such account, together with the inventory and statement of affairs filed by the insolvent, and shall ascertain if the assets of the estate which ought to have been collected have been so collected, and shall either certify the account as correct, or shall report to the Court upon such account specifying any objections that he may have thereto; and, thereafter, upon a day to be fixed for that purpose, of which notice shall be given in the *Gazette*, the said account shall be submitted for approval to a Judge sitting apart, in the presence of the assignee and of the accountant to the Court, and of any parties concerned who may desire to attend; e) The Judge upon examining the account and after hearing parties and taking evidence, if he thinks fit to do so, shall have full power and authority to approve and pass such account, or to order the same to be altered and amended in such manner as he may deem just, or to reserve any question that may arise for the consideration of the Full Court. 4. When any such account has been passed, one copy thereof shall be filed and kept by the Court, and such copy shall be open to the inspection of any creditor, or of the debtor, or of any person interested, on payment of the prescribed fee.

Imp. § 78.

**Duty of assignee to furnish list of creditors. 79.** 1. The assignee shall, whenever required by any creditor to do so and on payment by such creditor of the prescribed fee, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors. 2. It shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself) at any time to call upon the assignee or official receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the assignee or official receiver shall, upon receipt of such notice, furnish and transmit such statement of the accounts. Provided the person at whose instance the accounts are furnished shall deposit with the assignee or official receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, such sum to be repaid to him out of the estate if the creditors or the Court so direct.

Imp. § 79; 53 & 54 Vic. c. 71, §§ 16. 17.

**Duty of assignee to keep proper books. 80.** The assignee shall keep, in the prescribed manner, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings and of such other matters as may be prescribed, and any creditor of the insolvent may, subject to the control of the Court, personally or by his agent, inspect any such books.

Imp. § 80.



**Annual statement by assignee.** 81. 1. Every assignee shall from time to time when thereto required by the official receiver, and not less than once in every year during the time he continues to act, transmit to the official receiver a statement showing the proceedings in the insolvency up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form. 2. The official receiver shall cause the statement so transmitted to be examined, and shall call the assignee to account for any misfeasance, neglect, or omission which may appear on the said statement or in his accounts or otherwise, and may require the assignee to make good any loss which the estate of the insolvent may have sustained by such misfeasance, neglect, or omission. 3. Where the official receiver is himself the assignee he shall submit a similar statement to the Court, and the Court shall in the prescribed manner cause the functions of the official receiver under the preceding subsection to be performed by any of its officers.

Imp. § 81.

*Control over assignee.*

**Discretionary powers of assignee and control thereof.** 82. 1. Subject to the provisions of this Ordinance, the assignee shall, in the administration of the property of the insolvent and in the distribution thereof among his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, if any; and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection. 2. The assignee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the assignee or otherwise, may direct, or whenever requested in writing to do so by one-fourth in value of the creditors. 3. The assignee shall also summon a meeting of creditors within fourteen days after being requested to do so by any creditor with the concurrence of one-sixth in value of the creditors, including the one making such request. Provided that the person at whose instance the meeting is summoned shall deposit with the assignee a sum sufficient to pay the costs of summoning the meeting such sum to be repaid to him out of the estate if the creditors or the Court so direct. 4. The assignee may apply to the Court, in the prescribed manner, for directions in relation to any particular matter arising under the insolvency. 5. Subject to the provisions of this Ordinance the assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

Imp. § 89; 53 & 54 Vic. c. 71, § 18. This section does not render the directions of creditors absolutely binding on an assignee. He may apply to the Court for directions. The persons voting at a creditors' meeting must act bona fide. — *In re Mendonca*, (20th November, 1903).

**Appeal to Court.** 83. If the insolvent or any of the creditors, or any other person, is aggrieved by any act or decision of the assignee, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of and make such order in the premises as it thinks fit.

Imp. § 90.

**Appeal to the Court against assignee. Control of the official receiver over assignee.** 84. 1. The official receiver shall take cognizance of the conduct of assignees, and, in the event of any assignee not faithfully performing his duties and duly observing all the requirements imposed on him by Ordinance, rules, or otherwise with respect to the performance of his duties, or in the event of any complaint being made to the official receiver by any creditor in regard thereto, the official receiver shall inquire into the matter and take such action thereon as he may deem expedient. 2. The official receiver may at any time require any assignee to answer any inquiry made in relation to any insolvency in which the assignee is engaged, and may, if the official receiver thinks fit, apply to the Court to examine upon oath the assignee or any other person concerning the insolvency. 3. The official receiver may appoint any person to make an investigation of the books and vouchers of the assignee.

Imp. § 91.

*Release of assignee.*

**Release of assignee.** 85. 1. When the assignee has realized all the property of the insolvent, or so much thereof as can, in his opinion, be realized without needlessly protracting the assigneeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been

removed from his office, the Court on his application shall cause a report by the accountant to the Court on his accounts to be prepared, and the Court shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the assignee, and shall either grant or withhold the release accordingly. 2. Where the release of an assignee is withheld, the Court may, on the application of any creditor or person interested, make such order as it may think just, charging the assignee with the consequences of any act or default that he may have done or made contrary to his duty. 3. An order of the Court releasing the assignee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the insolvent, or otherwise in relation to his conduct as assignee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact. 4. Where the assignee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the property of the insolvent shall vest in the official receiver. 5. Where on the release of an assignee the official receiver is or is acting as assignee no liability shall attach to him personally in respect of any act done or default made or liability incurred by any prior assignee. 6. Subsections 1 to 3 both inclusive of this section shall apply to the official receiver when he is or is acting as assignee and when the official receiver has been released under those subsections he shall continue to act, as assignee for any subsequent purposes of the administration of the debtor's estate, but no liability shall attach to him personally by reason of his so continuing in respect of any act done, default made, or liability incurred before his release.

Imp. § 82.

### *Part VI. Jurisdiction, Powers, and Procedure.*

**Jurisdiction to be exercised by Judge.** 86. Subject to the provisions of this Ordinance and to general rules, the jurisdiction of the Court may be exercised by any Judge of the Court and may be exercised in chambers: Provided that when any matter is decided by one Judge, there shall, subject to any general rules, be an appeal to the Full Court.

Imp. § 98.

**Power to the Court to decide questions.** 87. 1. The Court shall have full power to decide all questions of priorities, and all other questions whatever, whether of law or of fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case. 2. Where default is made by an assignee, debtor, or other person in obeying any order or direction given by the official receiver or any other officer appointed by the Governor under any power conferred by this Ordinance, the Court may, on the application of the official receiver or other duly authorized person, order such defaulting assignee, debtor, or person to comply with the order or direction so given; and the Court may also, if it thinks fit, on any such application, make an immediate order for the committal of such defaulting assignee, debtor, or other person: Provided that the power given by this subsection shall be deemed to be in addition to, and not in substitution for, any other right or remedy in respect of such default.

Imp. § 102.

**Power to the Court to order sale of disputed property.** 88. Where the right to any moveable property of a perishable description or any animal in the possession or custody of the official receiver or assignee is in dispute, the Court may after reasonable notice to the party claiming the same order the immediate sale of such property or animal, and the net proceeds of the sale shall represent the subject of the dispute to all intents and purposes or may make such other order as it may think fit.

**General powers of the Court.** 89. 1. Subject to the provisions of this Ordinance and to general rules, the costs of and incidental to any proceeding in Court under this Ordinance shall be in the discretion of the Court. 2. The Court may at any time adjourn any proceedings, before it, upon such terms, if any, as it may think fit to impose. 3. The Court may at any time amend any written process or proceeding under this Ordinance, upon such terms, if any, as it may think fit to impose. 4. Where by this Ordinance or by general rules, the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof,



upon such terms, if any, as the Court may think fit to impose. 5. Subject to any general rules, the Court may in any matter take the whole or any part of the evidence either viva voce, or by interrogatories, or upon affidavit, or by commission abroad. 6. For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the official receiver that it is expedient to do so, dispense with the public examination of one of such joint debtors, if he is unavoidably prevented from attending the examination by illness or absence abroad. 7. Subject to any general rules, the full Court and the Court may dispose of all matters in insolvency during vacation or non-session of the Court. 8. The Court may at any time review, rescind, or vary any order made by it under its insolvency jurisdiction.

Imp. § 105.

**Consolidation of two or more petitions. 90.** Where two or more insolvency petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court may think fit.

Imp. § 106.

**Substitution of petitioner. 91.** Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Ordinance in the case of the petitioning creditor.

Imp. § 107.

**Proceedings to continue when debtor dies. 92.** If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Imp. § 108.

**Staying proceedings. 93.** The Court may at any time, for sufficient reason, make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, in such terms and subject to such conditions as the Court may think just.

Imp. § 109.

**Petitions against partners. 94.** Any creditor whose debt is sufficient to entitle him to present an insolvency petition against all the partners of a firm may present a petition against any one or more partners of the firm, without including the others.

Imp. § 110.

**Dismissal of petition as to one or more respondents. 95.** Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the others of them.

Imp. § 111.

**In case of more than one petition, same assignee to be appointed. 96.** Where a receiving order has been made on an insolvency petition against or by one member of a partnership, and any other insolvency petition against or by a member of the same partnership is filed in the Court, unless the Court otherwise directs, the same assignee or receiver shall be appointed as may have been appointed in respect of the property of the first-mentioned member of the partnership; and the Court may give such directions for consolidating the proceedings under the petitions as it may think just.

Imp. § 112.

**Procedure in case of partner being insolvent. 97.** Where a member of a partnership is adjudged insolvent or where a receiving order is made, the Court may authorize the assignee to commence and prosecute any action in the names of the assignee and of the insolvent's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of his action, and, if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the Court may direct.

Imp. § 113.

**Insolvent contractor. 98.** Where an insolvent is a contractor, or where a receiving order is made against a debtor who is a contractor, in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the insolvent.

Imp. § 114.

**Action by or against partners. 99.** Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Ordinance in the name of the firm, but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified upon oath, or otherwise as the Court may direct.

Imp. § 115.

**Execution of search warrant. 100.** A search warrant issued by the Court for the discovery of any property of a debtor may be executed in the prescribed manner, or in the same manner and with the same privileges as a search warrant for property supposed to be stolen may be executed according to law.

Imp. § 119.

**Liability of person opposing the official receiver, etc. 101.** Every person who opposes or hinders the official receiver or an assignee or manager in the performance of his duty under this Ordinance shall be guilty of a contempt of court.

**Committal to prison. 102.** Where the Court commits any person to prison, the commitment may be to such convenient prison as the Court may think expedient.

Imp. § 120.

### *Part VII. Small Insolvencies.*

**Summary administration in small cases. 103.** When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official receiver reports to the Court that the property of the debtor is not likely to exceed in value fifteen hundred dollars, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Ordinance shall be subject to the following modifications: 1. If the debtor is adjudged insolvent the official receiver shall be the assignee; 2. There shall be no committee of inspection but the official receiver may do all things which may be done by the assignee with the permission of the committee of inspection; 3. Such other modifications may be made in the provisions of this Ordinance as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the provisions of this Ordinance relating to the examination and discharge of the debtor; Provided that the creditors may, at any time by special resolution, resolve that an assignee be appointed, and thereupon the matter shall proceed as if an order for summary administration had not been made.

Imp. § 121.

**Power to the Court to make administration order instead of order for payment by instalments. 104.** 1. Where a judgment has been obtained in any Court and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding five hundred dollars, inclusive of the debt for which the judgment is obtained, the Court may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the Court, under the circumstances of the case, may appear practicable, and subject to any conditions as to his future earnings or income which the Court may think just. 2. The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed five hundred dollars, but in such case the Court may, if it thinks fit, set aside the order. 3. Where it appears to the official receiver that property of the debtor exceeds in value fifty dollars, he shall, at the request of any creditor, seize the debtor's goods, and sell the same, but the household goods, wearing apparel, and bedding of the debtor or his family, and the tools and implements of his trade, to the value in the aggregate of one hundred dollars, shall to that extent be protected from seizure. For the purpose of this subsection the official receiver shall have the same rights and powers in and over the debtor's goods as if the debtor had been adjudged insolvent and such goods had vested in him. 4. When the order is made, no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to the Court, except with the leave of the Court and on such terms as the Court may impose; and all proceedings pending against the debtor in respect of any such debt shall be stayed, but the costs already incurred by the creditor may, on application to the Court, be added to the debt notified. 5. If the debtor makes default in payment of any instalment payable in pursuance of any



order under this section, he shall, unless the contrary is proved, be deemed to have had, since the date of the order, the means to pay the sum in respect of which he has made default and to have refused or neglected to pay the same. 6. The order shall be carried into effect in such manner as may be prescribed by general rules. 7. Money paid under the order and the proceeds of sale of any goods sold by the official receiver after deducting all expenses of seizure and sale and fees, shall be appropriated, first, in satisfaction of the costs of the plaintiff in the action, next, in satisfaction of the costs of administration, and then in liquidation of debts in accordance with the order. 8. Notice of the application for the order shall be sent to the official receiver, and, when the order is made, the official receiver shall publish a notice in the *Gazette* and in one newspaper calling on all persons who claim to be creditors in respect of debts contracted before the date of such order to prove their debts within twenty-one days from the date of the first publication of such notice. 9. Any creditor of the debtor, on proof of such debt before the official receiver, shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof. 10. Any creditor may, in the prescribed manner, object to any debt scheduled or to the manner in which payment is directed to be made by instalments. 11. Any person who, after the date of the order, becomes a creditor of the debtor, shall on proof of his debt before the official receiver, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order. 12. When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors. 13. Nothing in this section contained shall protect the debtor from proceedings for the recovery of any debt contracted by him after the date of the order and where any judgment or sentence for the payment of money is obtained against the debtor during the subsistence of the order, the Court may, if it thinks fit, on the application of the official receiver or any creditor of the debtor, rescind the order, adjudge the debtor insolvent and make all such consequential orders as may appear just. 14. During the subsistence of the order, no transport passed, or mortgage executed by the debtor shall be of any force or validity unless the official receiver or the person having the conduct of the order consents in writing to such transport or mortgage being passed or executed; and no advertisement of any intended transport or mortgage by the debtor shall be made by the Registrar until such consent in writing has been deposited in his office.

Imp. § 122.

## *Part VIII. Supplemental Provisions.*

### *Application of the Ordinance.*

**Exclusion of partnerships and companies. 105.** A receiving order shall not be made against any corporation or against any partnership, or association, or company registered under the *Companies Ordinance, 1864*, or the *Companies Ordinance, 1898*.

Imp. § 123.

**Administration in insolvency of estate of person dying insolvent. 106.** 1. Any creditor of a deceased debtor whose debt would have been sufficient to support an insolvency petition against such debtor, had he been alive, may present to the Court a petition, in the prescribed form, praying for an order for the administration of the estate of the deceased debtor, according to the law of insolvency. 2. Upon the prescribed notice being given to the representative of the deceased debtor, the Court may, on proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in insolvency of the deceased debtor's estate, or may, upon cause shown, dismiss such petition, with or without costs. 3. An order may be made under this section notwithstanding the executor has taken out an act of deliberation and the period of deliberation has not expired. 4. An executor or administrator may at any time apply for and obtain an order of administration under this section. 5. Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver as assignee, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Ordinance. 6. With the

modifications hereinafter mentioned, all the provisions of Part III relating to the administration of the property of an insolvent shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Ordinance. 7. In the administration of the property of the deceased debtor under an order of administration, the official receiver shall have regard to any claim by the representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate and to any claim for payment for medical attendance on and medicine for the deceased debtor for the four months preceding his deceased<sup>1)</sup>, and such claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts. 8. If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Ordinance in case of insolvency, such surplus shall be paid over to the heir of the deceased debtor or dealt with in such other manner as may be prescribed. 9. Notice to the heir or executor of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of insolvency, and after such notice no payment or transfer of property made by the heir or executor shall operate as a discharge to him as between himself and the official receiver. Save as aforesaid, nothing in this section shall invalidate any payment made or any act or thing done in good faith by the heir or executor before the date of the order for administration. 10. In any case of administration in insolvency under this section the creditors of the deceased debtor shall have the same powers as to appointment of an assignee and committee of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in insolvency and the provisions of this Ordinance relating to assignees and committees of inspection shall apply to assignees and committees of inspection appointed under the power conferred by this subsection. 11. General rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in insolvency. 12. "Creditor" in this section means one or more creditors qualified to present an insolvency petition as in this Ordinance provided.

Imp. §125; 53 & 54 Vic. c. 71, § 21.

**Making of general rules. 107.** 1. The Judges or a majority of them of whom the Chief Justice shall be one may from time to time make general rules for carrying into effect the objects of this Ordinance, and also for carrying into effect the *Debtors Ordinance, 1884*. 2. All such general rules shall be subject to the approval of the Governor and Court of Policy. 3. Any copy of the rules purporting to have been printed for the Government of British Guiana shall be prima facie evidence in all Courts and for all purposes of the due making and tenor of such rules.

Imp. § 127.

#### *Fees, expenditure, and returns.*

**Fees and remuneration. 108.** The Governor and Court of Policy may from time to time prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Ordinance; and may direct by whom and in what manner they are to be collected and accounted for, and to what account they shall be paid.

Imp. § 128.

#### *Evidence.*

**Evidence of notice. 109.** 1. A copy of the *Gazette* containing any notice inserted therein in pursuance of this Ordinance shall be evidence of the facts stated in the notice. 2. The production of a copy of the *Gazette* containing any notice of a receiving order, or of an order adjudging a debtor insolvent, or of an order of administration under section 106, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

Imp. § 132.

**Evidence of proceedings at meetings of creditors. 110.** 1. A minute of proceedings at a meeting of creditors or of a committee of inspection under this Ordinance, signed, at the same or the next ensuing meeting, by a person describing himself as, or appearing to be chairman of the meeting at which the minute is signed, shall be

<sup>1)</sup> *Sic*; obviously "decease."



received in evidence without further proof. 2. Until the contrary is proved, every meeting of creditors or of a committee of inspection in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

Imp. § 133.

**Evidence of proceedings in insolvency. 111.** 1. Any petition or copy of a petition in insolvency, any order or certificate or copy of an order or certificate made by the Court, any instrument or copy of an instrument, affidavit, or document made or used in the course of any insolvency proceedings, or other proceedings had under this Ordinance, shall, if it appears to be sealed with the seal of the Court, or purports to be signed by any Judge thereof, or is certified as a true copy by the Registrar, be receivable in evidence in all legal proceedings whatever. 2. Any copy of any document filed in the office of the official receiver shall, if it appears to be sealed with the seal of the official receiver, be receivable in evidence in all legal proceedings whatever.

Imp. § 134.

**Swearing of affidavits. 112.** Subject to general rules, any affidavit to be used in the Court may be sworn before any person authorized to administer oaths, or, in the case of a person who is out of the Colony, before a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides (he being certified, if residing out of Great Britain or Ireland, to be a magistrate or justice of the peace, or qualified as aforesaid, by a British minister or British consul, or by a notary public).

Imp. § 135; 53 & 54 Vic. c. 71, § 24.

**Deposition of deceased witness. 113.** In case of the death of the debtor or his wife, or of a witness whose evidence has been received by any Court in any proceeding under this Ordinance, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

Imp. § 136.

**Seal of the Court. 114.** The Court for matters in insolvency shall have a seal describing the Court with the word "insolvency", added, and judicial notice shall be taken of the seal, and of the signature of any Judge or of the Registrar, in all legal proceedings.

Imp. § 137.

**Seal of the official receiver. 115.** The official receiver for matters in insolvency shall have a seal, which must be approved by the Governor, and judicial notice shall be taken of the seal in all legal proceedings.

**Certificate of appointment of assignee. 116.** A certificate of the official receiver that a person has been appointed assignee under this Ordinance shall be conclusive evidence of his appointment.

Imp. § 138.

**Appeal from the official receiver to the Court. 117.** Where by this Ordinance an appeal to the Court is given against any decision of the official receiver, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made.

Imp. § 139.

**Proceedings of the official receiver. 118.** All documents purporting to be orders, directions, permissions, or certificates made, given, or issued by the official receiver, and to be sealed with the seal of the official receiver, shall be received in evidence, and deemed to be such orders, directions, permissions, or certificates without further proof, unless the contrary is shown.

Imp. § 140.

#### *Time.*

**Computation of time. 119.** 1. Where by this Ordinance any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then, in the computation of that limited time, the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter Week, or a day appointed for public fast, humiliation, or

thanksgiving, or holiday, or a day on which the Court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified. 2. Where by this Ordinance any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified.

Imp. § 141.

#### *Notices.*

**Service of notices. 120.** All notices and other documents for the service of which no special mode is directed may be sent by prepaid post letter to the last known address of the person to be served therewith.

Imp. § 142.

#### *Formal defects.*

**Formal defect not to invalidate proceedings. 121.** 1. No proceeding in insolvency shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court. 2. No defect or irregularity in the appointment or election of an assignee, receiver, or member of a committee of inspection shall vitiate any act done by him in good faith.

Imp. § 143.

#### *Corporations.*

**Acting of corporation, firm, etc. 122.** For all or any of the purposes of this Ordinance, a corporation may act by any of its officers authorized in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by his committee or curator, and any person under curatorship may act by his curator. A minor may act by his guardian, but no minor shall be adjudged insolvent.

Imp. § 148.

*Provision with respect to immoveable property where debtor who resides elsewhere becomes insolvent.*

**Opposition to conveyance, etc., of immoveable property. 123.** 1. Where any debtor who owns immoveable property in the Colony becomes unable to pay all his debts in full and his property is, by virtue of any Act of the Imperial Parliament, transferred to or placed under the administration of or vested in any assignee, trustee, receiver, or other person, every creditor who would have had the right under the law of the Colony, if such Act had not passed and the property of the debtor was not so transferred or vested as aforesaid, to oppose any transport or mortgage of such immoveable property by the debtor, shall be entitled to oppose any conveyance, transport, mortgage, or encumbrance of such immoveable property by such assignee, trustee, receiver, or other person. 2. No effect shall be given to any contract assignment, encumbrance, charge, or mortgage of any interest of any such debtor in any immoveable property in the Colony which has not been duly completed by transport or mortgage before the Court or Judge in due form of law. 3. Every person giving effect to any such contract, assignment, encumbrance, charge, or mortgage of any interest of any such debtor in any such immoveable property not so completed shall thereby become liable to pay the debts in full of such debtor which are due to persons who would have had a right to oppose such contract, encumbrance, charge, or mortgage if the same had been advertised in the customary manner.

#### *Construction of former Ordinances, etc.*

**Construction of terms "commission of insolvency" or "fiat in insolvency" in former laws, etc. 124.** 1. Where, in any law, Ordinance, instrument, or proceeding passed, executed, or taken before the commencement of this Ordinance, mention is made of a commission of insolvency or of a fiat in insolvency, the same shall be construed, with reference to the proceedings under an insolvency petition, as if a commission of or a fiat in insolvency had been actually issued at the time of the presentation of such petition. 2. Where, by any law, Ordinance, or instrument, reference is made to the *Insolvency Ordinance, 1872*, or to the *Insolvency Ordinance,*



1884, such law, Ordinance, or instrument shall be construed and have effect as if reference were made therein to the corresponding provisions of this Ordinance.  
Imp. § 149.

**Account to be kept by official receiver. 125.** 1. An account called the Insolvency Estates' Account shall be kept by the official receiver with the Receiver-General, to which the moneys mentioned in sections 53 (4), 75 and 126 of this Ordinance shall be paid. 2. The official receiver may apply to the Governor for payment out of any moneys standing at the credit of the Insolvency Estates' Account of any amount which may be required for the purpose of advances for the use of any estate, and the Governor may direct that such sum as may be required shall be paid to the official receiver by the Receiver-General from the said moneys. 3. Where the official receiver obtains any such advances he shall as soon as the same have been recovered by him under this Ordinance or the rules thereunder repay the same to the Insolvency Estates' Account, and if the advance has been unpaid for more than one month, interest thereon shall be payable out of the said estate from the date of the advance to the repayment thereof at the rate of six per cent. per annum. 4. The official receiver shall keep a separate book shewing every amount drawn by him from the Insolvency Estates' Account and every payment made by him to that account, and such account shall be audited by the Auditor-General once in every quarter. 5. Nothing in this section or Ordinance contained shall authorize the official receiver to incur without the express directions of the Court or the personal security of some creditor any expense in relation to the estate of the debtor against whom a receiving order has been made, but who has no available assets.

*Unclaimed dividends, etc.*

**Unclaimed dividends and moneys. 126.** 1. Where the assignee under any insolvency, composition, or scheme pursuant to this Ordinance has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, the assignee has in his hands or under his control any unclaimed or undistributed moneys arising from the property of the debtor, he shall forthwith pay the same to the Insolvency Estate's Account in manner provided in section 75. The Receiver-General shall deliver to the official receiver a receipt for the money so paid, which shall be an effectual discharge to him in respect thereof. 2. Any person claiming to be entitled to any moneys paid into the Insolvency Estates' Account pursuant to this section may within ten years from the date when such moneys were so paid in apply to the Governor-in-Council for payment to him of the same. 3. The Governor-in-Council if satisfied of the correctness of the claim, may authorize the Receiver-General to pay out the amount claimed or any portion to which the right may be established. 4. The Governor-in-Council if not satisfied of the correctness of the claim, may authorize and require the claimant to establish his claim in due course of law, and the Receiver-General shall enter and make such defence as he may be advised. 5. If any such moneys remain unclaimed for the period of ten years immediately following the date when they were so paid in as aforesaid all right, title, and interest of every person in and to the same shall be prescribed and barred, and such moneys shall be transferred from the Insolvency Estates' Account to the credit of the fee fund.

Imp. § 162.

**Provisions which bind the Crown. 127.** Save as herein provided, the provisions of this Ordinance relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown.

Imp. § 150.

**Solicitors' right of audience. 128.** All solicitors shall have the right of audience in all such proceedings under the *Debtors Ordinance, 1884*, or this Ordinance, or any Ordinance amending either of the said Ordinances, as are heard and determined before a judge of the Court, but in no proceedings under the said Ordinances heard and determined by the full Court.

Imp. § 151.

*Repeal.*

**Repeal of Ordinance 10 of 1884. 129.** 1. The *Insolvency Ordinance, 1884*, is hereby repealed as and from the commencement of this Ordinance. 2. The repeal effected by this Ordinance shall not affect: a) Anything done or suffered before

the commencement of this Ordinance under the *Insolvency Ordinance, 1884*; nor b) Any right or privilege acquired, or duty imposed, or liability or disqualification incurred, under the said Ordinance; nor c) Any fine, forfeiture, or other punishment incurred in respect of any offence committed against the said Ordinance; nor d) The institution or continuance of any proceeding or remedy for ascertaining any such liability or disqualification, or enforcing or recovering any such fine, forfeiture, or punishment as aforesaid. 3. The proceedings under any insolvency petition, liquidation by arrangement, or composition with conditions under the *Insolvency Ordinance, 1884*, pending at the commencement of this Ordinance shall be deemed to have commenced and shall continue under the corresponding provisions of this Ordinance relating to similar proceedings and all the provisions of this Ordinance shall apply thereto. 4. In any case in which there is no provision in this Ordinance relating to similar proceedings, notwithstanding the repeal effected by this Ordinance, the provisions of the *Insolvency Ordinance, 1884*, shall apply as if this Ordinance had not been passed.

Imp. § 169.

**Suspending section. 130.** This Ordinance shall not come into operation unless and until the Governor notifies, by proclamation, that it is Her Majesty's pleasure not to disallow the same, and thereafter it shall come into operation upon such day as the Governor shall notify by the same or any other Proclamation.

## *Schedules.*

### *The First Schedule.*

#### **Meetings of creditors.**

1. The first meeting of creditors shall be summoned for a day not later than twenty-one days after the date of the receiving order, unless the official receiver for any special reason deems it expedient that the meeting be summoned for a later day.

2. The official receiver shall summon the meeting by giving not less than six days' notice of the time and place thereof in the *Gazette* and in one newspaper. The notice shall also require all persons claiming to be creditors to prove their debts before such meeting.

3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs a notice of the time and place of the first meeting of creditors, but the proceedings at the first meeting shall not be invalidated by reason of any such notice not having been sent or received before the meeting.

4. The meeting shall be held at such place as, in the opinion of the official receiver, is most convenient for the majority of the creditors, and the statement of affairs (if any) shall be laid before the meeting.

5. The official receiver or the assignee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court or so requested in writing by one-fourth in value of the creditors.

6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting.

7. The official receiver or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting may, by resolution, appoint.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in insolvency to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or of any debt the value of which is not ascertained.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him, after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court, on application, is satisfied that the omission to value the security has arisen from inadvertence.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and, for the purposes of voting but not for the purposes of dividend, to deduct it from his proof.



12. It shall be competent to the official receiver or the assignee, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally, on payment of the value so estimated, with an addition thereto of 20 per cent. Provided that, where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per cent. shall not be made if the official receiver or assignee requires the security to be given up.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of the creditors, and shall be entitled to vote thereat.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. 1. Every instrument of proxy shall be in the prescribed form and shall be signed by the creditor in the presence of two witnesses and may be obtained from the official receiver or after the appointment of an assignee, from the assignee. If any insertion therein is not in the handwriting of the person giving the proxy, or of any manager or clerk or other person in his regular employment, or of any commissioner to administer oaths to affidavits, the name of the person making such insertion shall be stated. 2. Neither the name nor the description of the official receiver or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is sent.

17. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case, the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

18. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters: a) For or against any specific proposal for a composition or scheme of arrangement; b) For or against the appointment of any specified person as assignee at a specified rate of remuneration or as member of the committee of inspection or for or against the continuance in office of any specified person as assignee or member of a committee of inspection; c) On all questions relating to any matter, other than those above referred to, arising at any specified meeting or adjournment thereof.

19. A proxy shall not be used unless it is deposited with the official receiver or assignee three hours before the meeting at which it is to be used.

20. Where it appears, to the satisfaction of the Court, that any solicitation has been used by or on behalf of an assignee or receiver in obtaining proxies or in procuring the assigneeship or receivership except by the direction of a meeting of creditors, the Court shall have power, if it thinks fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

21. A creditor may appoint the official receiver to act in the prescribed manner as his general or special proxy.

22. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

23. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors, if their number does not exceed three.

24. If, within half an hour from the time appointed for the meeting, a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week, at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

25. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book to be kept for that purpose and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

26. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner, or his employer in a position to receive any remuneration out of the estate of the debtor, otherwise than as a creditor rateably with the other creditors of the debtor: Provided that, where any person holds special proxies to vote for the appointment of himself as assignee, he may use the said proxies and vote accordingly.

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*The Second Schedule.***Proof of Debts.***Proof in ordinary cases.*

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.
2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if an assignee has been appointed, to the assignee, and affidavit verifying the debt. *Cp. In re Mc Gowan (7th October, 1901.)*
3. The affidavit may be made by the creditor himself or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.
4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or the assignee may at any time call for the production of the vouchers.
5. The affidavit shall state whether the creditor is or is not a secured creditor.
6. A creditor shall bear the cost of proving his debt, unless the Court otherwise specially orders.
7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times, on payment of the prescribed fee.
8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount not exceeding five per cent. on the net amount of his claim, which he may have agreed to allow for payment in cash.

*Proof by secured creditors.*

9. If the security held by a secured creditor has been realized he may prove for the balance due to him, after deducting the amount received by him on account of his debt out of the proceeds of such realization.
10. If a secured creditor surrenders his security to the official receiver or the assignee for the general benefit of the creditors, he may prove for his whole debt.
11. If a secured creditor does not surrender his security and his security has not been realized, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.
12. 1. Where a security is so valued the assignee may at any time redeem it, on payment to the creditor of the assessed value. 2. If the assignee is dissatisfied with the value at which a security is assessed, he may proceed to offer for sale the property comprised in any security so valued at such times and on such terms and conditions as may be agreed on between the creditor and the assignee or as, in default of such agreement, the Court may direct. If the sale is by public auction or tender, the creditor, or assignee on behalf of the estate, may bid or tender and purchase: Provided that the creditor may at any time, by notice in writing, require the assignee to consent to the security being realized, or to realize the security, and if the assignee does not within three months after receiving the notice, give his consent or take the necessary steps, the creditor may apply to the Court for directions to be issued to the assignee.
13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing, to the satisfaction of the assignee, or the Court, that the valuation and proof were made bona fide on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor and upon such terms as the Court shall order, unless the assignee allows the amendment without application to the Court.
14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.
15. If after a creditor has valued his security, it is subsequently realized the amount received by him in respect thereof shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.
16. If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.
17. A creditor shall in no case receive more than one hundred cents in the dollar, and interest as provided by this Ordinance.

*Proof in respect of distinct contracts.*

18. If a debtor was, at the date of the receiving order, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor and also as a member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that



the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts against the properties respectively liable on the contracts.

*Periodical payments.*

19. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order, as if the rent or payment grew due from day to day.

*Interest.*

20. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in the insolvency, the creditor may prove for interest at a rate not exceeding four per cent. per annum to date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and, if payable otherwise, then from the time when the demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

21. Where a debt has been proved upon a debtor's estate under this Ordinance, and such debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall for the purposes of dividend, be calculated at a rate not exceeding six per cent. per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

*Debt payable at a future time.*

22. A creditor may prove for a debt not payable when the debtor committed an act of insolvency as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of six per cent. per annum computed from the declaration of a dividend, to the time when the debt would have become payable, according to the terms on which it was contracted.

*Admission or rejection of proofs.*

23. The assignee shall examine every proof and the grounds of the debt, and in writing, admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

24. If the creditor is dissatisfied with the decision of the assignee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

25. If the assignee thinks that a proof has been improperly admitted, the Court may, on the application of the assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

26. The Court may also expunge or reduce a proof, on the application of a creditor, if the assignee declines to interfere in the matter, or, in the case of a composition or scheme, on the application of the debtor.

27. The official receiver, before the appointment of an assignee, shall have all the powers of an assignee with respect to the examination, admission, or rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

## **b) No. 10 of 1906. An Ordinance to amend the Indictable Offences Ordinance, 1893, with regard to Fraudulent Acts of Debtors (18th August, 1906).**

**[1. Short title.]**

**Penalty for debtors not keeping proper books of account.** 2. Every person who, having been adjudged insolvent or having had a receiving order made in respect of his estate after the presentation of an insolvency petition by or against him, and who within three years next before the presentation of an insolvency petition by or against him, shall have failed to keep in an intelligible manner such books of account as are usual and proper in the business, if any, carried on by him, and as sufficiently disclose his business transactions and financial position, shall, unless the jury are satisfied that he had no intent to defraud, be guilty of a misdemeanour, and being convicted thereof shall be liable to imprisonment for two years.

# British West Indies.<sup>1)</sup>

In order to clearly understand the mercantile and maritime laws of the British possessions in the West Indies it is necessary to refer briefly to the historic origin of the laws and legislative powers existing in those island Colonies.

The fundamental distinction to be regarded is—whether the colony under consideration was acquired by the discovery of English navigators, and, on such discovery, was found to be territory not in the occupation of any Christian prince or people, and thereupon was taken possession of for the English Sovereign who by Royal Charter or other act of state erected the discovered territory into a settlement or colony for English subjects. This mode of acquisition has received the legal definition of acquisition by settlement, to distinguish it from acquisition by conquest or cession from another sovereign power. In the former case the settlements became at once subject to the English common law and the settlers enjoyed all the constitutional rights and liberties of the people of England; whilst in the case of conquest or cession, the continuance of the then existing laws and legislative power became subject to the pleasure of the Crown, limited, however, as to its exercise by the special terms (if any) of the articles of capitulation or surrender or of the treaty of cession. Such terms generally provided for the continuance of the old laws: hence in colonies thus acquired there may be found Spanish, French, or Dutch laws. But in course of time these old laws became gradually modified by the colonial legislation and a body of law more English than foreign has resulted. Nevertheless, the primary distinction remains that in a settled colony the English common law prevailed, automatically as it were, from the first; whereas in a conquered colony only such portions of English common law prevail as have been adopted by its own legislative act or promulgated by the ordinance or Order in Council of the Crown.

The preceding observations have application to the following West Indian colonial possessions: The Bahamas, Barbados, Trinidad and Tobago, and Jamaica; the Leeward Islands, viz., Antigua, St. Christopher and Nevis, Dominica, Montserrat, and the Virgin Islands, and the Windward Islands, viz., Grenada, St. Vincent, and St. Lucia.

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## I. Trinidad and Tobago.

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### Introduction.

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#### History and government.

The island of Trinidad in 1797 became a British possession by conquest from Spain; it is necessary therefore, in order to ascertain what national law prevails, to refer to the terms of the surrender or capitulation, and to the treaty of peace at the close of the war. The Articles of Capitulation for the surrender of the island of Trinidad, between His Excellency Sir Ralph Abercromby, Commander in Chief of His Britannic Majesty's Land Forces; His Excellency Henry Harvey, Esq., Rear-Admiral of the Red and Commander in Chief of His Britannic Majesty's Ships and Vessels of War; and His Excellency Don Joseph Maria Chacon, Knight of the Order of Calatrava, Brigadier of the Royal Navy, Governor and Commander in Chief of the island of Trinidad and its Dependencies, etc. etc., were signed at Port d'Espagne in the island of Trinidad on the 18th day of February, 1797, by Ralph Abercromby, Henry Harvey, and Joseph Maria Chacon.

<sup>1)</sup> In the sections on the law of the British West Indies the Introductions are contributed by Mr. Shepherd and the Statutes by Mr. Huberich.



The 8th of these Articles provided that all the private property of the inhabitants, as well Spanish as such as had been naturalised, was preserved to them: and the 9th Article made all contracts or purchases between individuals which had been entered into according to the laws of Spain binding and valid: and the 10th Article enabled the Spanish officers of administration who were possessed of landed property in Trinidad to remain, on taking the oaths of allegiance to His Britannic Majesty, and if they pleased, to sell their property and retire elsewhere. The 13th Article stipulated that the free coloured people, acknowledged as such by the laws of Spain, were to be protected in their liberty, person, and property like other inhabitants, they taking the oath of allegiance and demeaning themselves as peaceable subjects of His Britannic Majesty; and the 15th, that all the inhabitants of Trinidad were within thirty days from the date of the Articles of Capitulation to take the oath of allegiance to His Britannic Majesty and demean themselves quietly and faithfully to his government upon pain in case of non-compliance of being sent away from the Island<sup>1</sup>).

Upon the conclusion of the war a treaty of peace, between His Britannic Majesty on the one part, and the French Republic, the King of Spain and the Batavian Republic on the other part, was signed at Amiens, on the 27th March, 1802. It was stipulated by the 4th Article that His Catholic Majesty ceded and guaranteed in full right and sovereignty to His Britannic Majesty the island of Trinidad, and by the 14th Article that all legal claims in dispute between private individuals, reviving by the law of nations at the period of peace, were to be adjudicated upon by competent tribunals.

It appears from these Articles of Capitulation and the subsequent Treaty of Peace that Trinidad was surrendered and ceded without any general reservation to the inhabitants of their old Spanish laws: the British sovereign was therefore at liberty to impose what laws he pleased. The Spanish inhabitants had however become British subjects, and until fresh laws were imposed, the old Spanish colonial laws, as then operative, would remain. In June, 1801, the King's commission to General Picton for the administration of the government of the Island provided that it should, as nearly as circumstances would permit, be exercised by him according to the terms of the capitulation in conformity to the ancient laws and institutions that subsisted within the Island before its surrender, subject to such directions as the King should from time to time give under royal signet or sign manual, or by royal order in Privy Council, or to such variation as sudden emergencies might render absolutely necessary. The Courts of Judicature, as they existed before the surrender, were until further royal order to continue to exercise all their judicial powers in criminal and civil cases, and to proceed therein according to the laws by which the Island was then governed.

Thus, the Spanish colonial law would remain the law of Trinidad until varied by Orders in Council or the Ordinances of any legislative council which the King might erect and constitute in the Island, or by Acts of the Imperial Parliament.

### Law in force.

The mercantile and maritime law of Trinidad and Tobago is to be found in the Revised edition of The Laws of Trinidad and Tobago, published by the Government of the Colony in 1905, supplemented by the yearly additions made since that year by the Legislative Council. Tobago was acquired by conquest from France and ceded to Great Britain by the Treaty of Paris, 1814. By Order in Council of the 17th November, 1888, pursuant to the Act of the Imperial Parliament (50 & 51 Vic. c. 44) Trinidad and Tobago were constituted one colony as from 1st January, 1889, and the Supreme Court of Trinidad was from that date to be the Supreme Court of Trinidad and Tobago. By Order in Council of the 20th October, 1898, it was ordained that the laws in force on 1st January, 1899, in Trinidad should be in force in Tobago, and the laws theretofore in force in Tobago so far as they differed from the law in force in Trinidad should cease to be in force.

With a saving of all existing rights the laws of the two islands have since the 1st January, 1899, been consolidated.

In Trinidad and Tobago the problem of codification presented more than the usual difficulties to which the preliminary work of revision and consolidation was also subject; this arose from the fact that the sources of law were Spanish as well

<sup>1</sup>) Extracted from the London Gazette Extraordinary of Monday, March 27th, 1797.

as English: old laws of Spain and English Orders in Council, Letters Patent, Imperial Acts of Parliament, and the Colonial Ordinances themselves.

But Great Britain, in the early days of her acquisition of Trinidad, permitted the inhabitants to retain many of their old Spanish laws; she could not well do otherwise; they had come under allegiance to the British Crown, and as British subjects their legal convenience demanded equitable consideration. But a conflict of laws soon manifested itself, and the state trial of General Picton—the first Governor—for an administrative act done pursuant to Spanish law, is an historic incident associated with the difficulties arising from the retention of that law.

**The Gradual Substitution of English Law.** In consequence of many complaints as to the operation of the various laws, a Commission of Legal Inquiry was appointed in 1823 by Royal Warrant and resulted in an exhaustive Report, with various recommendations, amongst which were the introduction of the English mode of trial in criminal cases, the gradual substitution of such parts of English law as were better adapted to the then state of society in the Colony than the Spanish law, and the constitution of a Council so as to secure to all classes of the inhabitants control over the expenditure.

By Royal Instructions, 25th April, 1831, and this Commission, the Governor was empowered to appoint a Council of Government, and full power was vested in him to make laws with the advice and consent of the Council for the order, peace and good government of the Island. The Council came into existence in 1832, as the Legislative Council; the legislative power of the Governor in Council was not exclusive, but concurrent with and in some respects subordinate to the direct legislative power of the Crown by Orders in Council and Letters Patent and the legislative power of the Imperial Parliament. The body of law which resulted from these concurrent legislative sources constituted the Statutory Law of Trinidad, and it is this Law, commencing in 1832 with Orders in Council then existing, and ending 31st December, 1904, which has been the subject-matter of the recent statutory revision.

**The Revision of the Statute Law.** The Statute Law Revision Ordinance, 1899 (Trinidad and Tobago), empowered the Governor to appoint Commissioners, not exceeding three in number, for the purpose of preparing a revised edition of the Statute Laws and of all Orders in Council in force in the Colony, with various powers, which are detailed in the Ordinance. This Revision Ordinance further declared that the revised edition of the Laws and Orders in Council, upon the same being approved by the Governor in Council, should become the substantive statute book of the Colony. The Commissioners, appointed by the Governor in 1899, to carry out this important and difficult work, were the Hon. Nathaniel Nathan, Q. C., Attorney-General of the Colony, His Honour Thomas Baynes, Puisne Judge of the Colony, and the Hon. Vincent Browne, Q. C., Solicitor-General of the Colony. By resolution in due form pursuant to the Revision Ordinance, the Legislative Council approved the revised edition on 1st May, 1905.

**The Revised Edition.** *The Laws of Trinidad and Tobago* is the title of the revised edition of the Statutes which came into force on 1st May, 1905. It consists of five volumes: the Ordinances are numbered consecutively throughout the whole edition. No dates or other particulars of the superseded Ordinances are given, but two other supplementary volumes are published, one entitled: *A Chronological Table of Ordinances from 1832 to 1904, showing those which have been repealed and the place in the Revised Edition of those in force.* This is followed in the same volume by 'An Index to the Revised Edition of the Laws of Trinidad and Tobago.' The other supplementary volume is entitled: *Orders in Council, By-Laws, Rules, and Regulations, etc., in Force on 31st December, 1905, Trinidad. Printed at the Government Printing Office, Port of Spain, 1905.* This volume is divided into three parts: Part I: Orders in Council, printed in full, which include all Orders in Council relating to Privy Council Appeals. Part II: Chronological Table of Orders in Council; being a list, in order of date, of Orders in Council published in the *Royal Gazette* from 1874 to 1905. Part III: Alphabetical list of By-laws, etc.

**Agency.** The general law of agency in the absence of any express Ordinances must be deemed to follow Spanish as well as English common law.

Powers of attorney are controlled in their effect by the Conveyancing and Law of Property Ordinance (No. 72 R. E.).



**Partnership.** The Law of Partnership Ordinance (No. 86 R. E.) provides that lenders of money to a trader at interest varying in rate with the profits of the business, agents receiving as commission for services a share in the profits, widows and children of a deceased partner receiving a share of profits by way of annuity, and vendors of the goodwill of a business in consideration of a share of the profits are not to be deemed partners: but in the event of the bankruptcy of the trader such lenders and vendors are postponed to the other creditors of the bankrupt trader.

Subject to the provisions of this ordinance the general law applicable to partnership would seem to follow Spanish rather than English common law, though the influence of English law has a tendency to prevail with the tribunals.

**Company Law.** The British and Foreign Companies Ordinance (No. 23, 1907) enables English companies registered under Imperial Acts or under a law of the United States of America to obtain registration in the Colony, of their incorporation and of their memorandum and articles of association; the Ordinance regulates the conditions under which deeds of the company executed elsewhere than in the Colony, and also those executed in the Colony under power of attorney, are to have effect in the Colony.

The Companies Ordinance (No. 69 R. E.) regulates the constitution, incorporation, and registration of companies (other than those engaged in the business of banking) with limited liability.

The Companies (Branch Register) Ordinance (No. 71 R. E.) enables companies registered under the Companies Ordinance (No. 69 R. E.) whose objects comprise transaction of business in British India or any British colony and who have power to open branch registers in any colony, to open in Trinidad and Tobago a branch register of members there resident in accordance with the regulations of this Ordinance.

**Sale of Goods.** The Sale of Goods Ordinance (No. 64 R. E.) extends to the Colony the Imperial Sale of Goods Act, 1893, except the section as to sale in market overt and such other sections as are inapplicable to the Colony.

**Factors.** The Imperial Factors Act, 1889, has not been extended to the Colony.

**Bills of Exchange.** The Bills of Exchange Ordinance (No. 62 R. E.) extends to the Colony the Imperial Bills of Exchange Act of 1882; in the interpretation section a dollar is defined as four shillings and two pence.

**Bills of Lading.** The Bills of Lading Ordinance (No. 85 R. E.) transfers and vests in the consignees and endorsees of bills of lading all rights of suit and sub-jects them to the same liabilities in respect of the goods as if the contract in the bill of lading had been made with such consignees or endorsees themselves. Bills of lading in the hands of a consignee or endorsee for valuable consideration are made conclusive evidence against the master or other person signing the same of the shipment of the goods named therein although in fact not shipped, subject to provisions exonerating the master in cases of fraud by the shipper.

**Bankruptcy.** The Bankruptcy Ordinance (No. 8, 1907) is based on the Imperial Bankruptcy Act, 1883.

**General Mercantile Law.** The Mercantile Law Ordinance (No. 81 R. E.) makes simple contracts, without a valuable consideration sufficient by the law of England to support the contract against the party charged therewith, void; but this provision is not to affect specialty contracts, i. e., deeds duly executed. The Ordinance contains provisions as to parol promises and agreements, acknowledgments of debts, endorsements of payments on notes, bills, or other writings, debts by simple contract alleged by way of set-off on the part of a defendant, confirmation of contracts by minors, representations as to character, actions against a surety, and gives powers to the Court or Judge to allow interest or give damages.

### Courts and procedure.

The judicial organization comprises the Supreme Court and certain Petty Civil Courts. The Supreme Court consists of two or three Judges and administers law and equity concurrently. The Supreme Court has the jurisdiction of the High Court of Justice in England, and jurisdiction in divorce and matrimonial causes<sup>1</sup>). The Petty Civil Courts have jurisdiction up to £25. An appeal lies from the Petty Civil

<sup>1</sup>) Ord. No. 34.

Courts to the Supreme Court where the judgment involves more than £10<sup>1</sup>). An appeal lies from the Supreme Court to the Privy Council where the amount involved is £500 or upwards. A pro forma judgment is sufficient. The appeal must be asked for within twenty-one days and the appellant must furnish security within three months in an amount not exceeding £500.<sup>2</sup>)

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**Chronological table of orders in council and ordinances, 1831—1877.** Port of Spain. 1877.  
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## Statutes.<sup>4</sup>)

### Partnership.

#### No. 86. An Ordinance relating to the Law of Partnership.<sup>5</sup>)

**Short title. 1.** This Ordinance may be cited as the *Partnership Ordinance*.

**Interpretation. 2.** In the construction of this Ordinance the word "person" shall include a partnership firm, a joint-stock company, and a corporation.

**Advance of money on contract to receive share of profits. 3.** The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not, of itself, constitute the lender a partner with the person carrying on such trade or undertaking or render him responsible as such.

**Payment of agents, etc., by share of profits. 4.** No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein nor give him the rights of a partner.

**Certain annuitants not to be partners. 5.** No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of, or be subject to any liabilities incurred by such partner.

**Receipt of profits in consideration of sale of goodwill. 6.** No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the goodwill of such business, shall by reason only of such receipt be deemed to be a partner of, or be subject to the liabilities of the person carrying on such business.

**In case of bankruptcy, etc., lender not to rank with other creditors. 7.** In the event of any such trader as aforesaid being adjudged a bankrupt or entering into any arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of his principal or of the profits or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid, until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied.

<sup>1</sup>) Ord. No. 9 of 1911. — <sup>2</sup>) Order in Council, 2d April, 1909. — <sup>3</sup>) A chronological table and index is contained in vol. 6. — <sup>4</sup>) As in force 25th February, 1912. — <sup>5</sup>) A guarantee to or on behalf of a partnership ceases to be operative upon a change in the membership of the firm, unless a contrary intention appears. — Ord. No. 83, § 3.



## Companies.

### a) No. 69. An Ordinance relating to the Incorporation, Regulation, and Wi ding-up of Trading Companies and other Associations.

**Short title.** 1. This Ordinance may be cited as the *Companies Ordinance*.

Imp. § 295.

**Partnerships exceeding certain number to register.** 2. No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business, other than that of banking, that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Ordinance, or is formed in pursuance of some other Ordinance, or of letters patent.

Imp. § 1.

**Banking companies.** 3. Nothing in this Ordinance contained shall extend to any company formed for the purpose of carrying on the business of banking.

Imp. § 1.

### *Part I. Constitution and Incorporation of Companies and Associations under this Ordinance.*

**Mode of forming company.** 4. Any seven or more persons associated for any lawful purpose may, by subscribing their names to the memorandum of association and otherwise complying with the requisitions of this Ordinance in respect of registration, form an incorporated company with limited liability.

Imp. § 2.

**Liability of members.** 5. The liability of the members of a company formed under this Ordinance shall be limited to the amount, if any, unpaid on the shares respectively held by them.

Imp. § 2.

**Memorandum of association.** 6. The memorandum of association of every company formed under this Ordinance shall contain the following things, that is to say: 1. The name of the proposed company with the addition of the word "limited" as the last word in such name. 2. The part of the Colony in which the registered office of the company is to be situate. 3. The objects for which the proposed company is to be established. 4. A declaration that the liability of the members is limited. 5. The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount; subject to the following regulations: a) That no subscriber shall take less than one share. b) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Imp. § 3.

**Signature and effect of memorandum.** 7. The memorandum of association shall be signed by each subscriber in the presence of, and be attested by one witness at the least, and, when registered, shall bind the company and the members thereof to the same extent as if the same were a specialty, and there were in the memorandum contained, on the part of each member, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Ordinance.

Imp. §§ 6, 14.

**Alteration of memorandum.** 8. Any company constituted under this Ordinance may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed or as altered by special resolution in manner hereinafter mentioned, as to increase its capital by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but, save as aforesaid, and save as is hereinafter provided in the case of a change of name, no alteration shall be made by any company in the conditions contained in its memorandum of association.

Imp. § 41.

**Change of name.** 9. Any company under this Ordinance, with the sanction of a special resolution of the company passed in manner hereinafter mentioned, and with the approval of the Governor testified in writing under his hand, may change

its name, and upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Imp. § 8.

**Articles of association. 10.** The memorandum of association may be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. The articles shall be expressed in separate paragraphs, numbered arithmetically. They may adopt all or any of the provisions contained in the table marked A in the first Schedule hereto. They shall state the amount of capital with which the company is proposed to be registered.

Imp. § 10.

**Each subscriber to take one share. 11.** Each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes. If the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the table marked A in the first Schedule hereto, the last mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in the articles of association, and the articles had been duly registered.

Imp. §§ 3, 11.

**Signature and effect of articles of association. 12.** The articles of association shall be printed, and shall be signed by each subscriber in the presence of, and be attested by one witness at the least. When registered, they shall bind the company and the members thereof to the same extent as if the same were a specialty, and there were in such articles contained a covenant on the part of each member, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Ordinance; and all moneys payable by any member to the company in pursuance of the conditions and regulations of the company, or any of such conditions and regulations, shall be deemed to be a debt due from such member to the company, and in the nature of a specialty debt.

Imp. §§ 12, 14.

**Memorandum and articles to be registered. 13.** The memorandum of association and the articles of association, in cases where articles of association are by the desire of the parties to be registered, shall be delivered to the Registrar-General, who shall retain and register the same.

Imp. § 15.

**Registrar-General's fees. 14.** There shall be paid to the Registrar-General in respect of the several matters mentioned in the Table marked B in the first Schedule hereto, the several fees therein specified, which fees shall be paid by the Registrar-General into the Colonial Treasury.

**Effect of registration. 15.** Upon the registration of the memorandum of association, and of the articles of association in cases where articles are by the desire of the parties to be registered, the Registrar-General shall certify under his hand that the company is incorporated, and the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is herein-after mentioned: A certificate of the incorporation of any company given by the Registrar-General shall be conclusive evidence that all the requisitions of this Ordinance in respect of registration have been complied with.

Imp. §§ 16, 17.

**Copies of memorandum and articles to be given to members. 16.** A copy of the memorandum of association, having annexed thereto the articles of association,



if any, shall be forwarded to every member, at his request, on payment of the sum of two shillings, or such less sum as may be prescribed by the company for each copy; and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member, in pursuance of this section, the company so making default shall, for each offence, incur a penalty not exceeding one pound.

Imp. § 18.

**Identity of names in companies.** 17. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive.

Imp. § 8.

## *Part II. Distribution of Capital and Liability of Members.*

### *Distribution of capital.*

**Nature of interest in company.** 18. The shares or other interest of any member in a company under this Ordinance shall be personal estate, capable of being transferred in the manner provided by the regulations of the company, and shall not be of the nature of real estate, and each share shall be distinguished by its appropriate number.

Imp. § 22.

**Definition of "member."** 19. The subscribers of the memorandum of association of any company under this Ordinance shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and, upon the registration of the company, shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company under this Ordinance, and whose name is entered on the register of members, shall be deemed to be a member of the company.

Imp. § 24.

**Transfer by personal representative.** 20. Any transfer of the share or other interest of a deceased member of a company under this Ordinance, made by his personal representative, shall notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Imp. § 29.

**Register of members.** 21. Every company under this Ordinance shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars: 1. The names and addresses, and the occupations, if any, of the members of the company, with the addition of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member. 2. The date at which the name of any person was entered in the register as a member. 3. The date at which any person ceased to be a member. And any company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues, and every director or manager of the company, who shall knowingly and wilfully authorize or permit such contravention, shall incur the like penalty.

Imp. § 25.

**Annual list of members and summary.** **Schedule II. Form A.** 22. Every company under this Ordinance shall make, once at least in every year, a list of all persons, who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the company; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars: 1. The amount of the capital of the company, and the number of shares into which it is divided. 2. The number of shares taken from the commencement of the company up to the date of the summary. 3. The amount of calls made on each share. 4. The total amount of calls received. 5. The total amount of calls unpaid. 6. The total amount of shares forfeited. 7. The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them. The above list and summary shall be contained in a separate part of the register, and shall be completed within

seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the Registrar-General.

Imp. § 26.

**Subdivision of shares. 23.** Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution as by subdivision of existing shares or any of them to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association. Provided that in the subdivision of existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Imp. § 41.

**Memorandum to contain number and amount of shares into which capital is divided. 24.** The statement of the number and amount of the shares into which the capital of the company is divided contained in every copy of the memorandum of association issued after the passing of any such special resolution shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 41.

**Not keeping proper register. 25.** If any company under this Ordinance makes default in complying with the provisions of this Ordinance with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar-General, such company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 26.

**Notice of consolidation or of conversion of capital into stock. 26.** Every company under this Ordinance that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the Registrar-General of such consolidation, division, or conversion specifying the shares so consolidated, divided, or converted.

Imp. § 42.

**Effect of conversion of shares into stock. 27.** Where any company under this Ordinance has converted any portion of its capital into stock and given notice of such conversion to the Registrar-General, all the provisions of this Ordinance which are applicable to shares only, shall cease as to so much of the capital as is converted into stock, and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the Registrar-General, shall show the amount of stock held by each member in the list instead of the amount of shares, and the particulars relating to shares hereinbefore required.

Imp. § 43.

**Entry of trusts on register. 28.** No notice of any trust expressed, implied, or constructive, shall be entered on the register of any company constituted under this Ordinance, or be receivable by the Registrar-General.

Imp. § 27.

**Certificate of shares or stock. 29.** A certificate under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be prima facie evidence of the title of the member to the share or shares or stock therein specified.

Imp. § 23.

**Inspection of register. 30.** The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned. Except when closed as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the



company may prescribe for each inspection; and every such member or other person may require a copy of such register, or any part thereof, or of such list or summary of members as is hereinbefore mentioned on payment of sixpence for every one hundred words required to be copied. If such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and every director and manager of a company who shall knowingly authorize or permit such refusal, shall incur the like penalty, and in addition to the above penalty any Judge may, by order, compel an immediate inspection of the register.

Imp. § 30.

**Closing of register.** 31. Any company under this Ordinance may, upon giving notice by advertisement in some newspaper circulating in this Colony, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Imp. § 31.

**Notice of increase of capital.** 32. Notice of any increase in the capital of any company constituted under this Ordinance shall be given to the Registrar-General within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and the Registrar-General shall forthwith record the amount of such increase of capital. If such notice is not given within the period aforesaid, the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and manager of the company, who shall knowingly and wilfully permit such default, shall incur the like penalty.

Imp. § 44.

**Improper entry or omission of entry in register. Rectification of register.** 33. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this Ordinance, or if default is made, or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may by motion in the Supreme Court apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs to be paid to the applicant or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all costs of such motion, and any damages the party aggrieved may have sustained. The Court may, in any proceedings under this section, decide on any question relating to the title of any person who is a party to such proceeding, to have his name entered in, or omitted from the register, whether such question arises between two or more members, or alleged members, or between any members or alleged members and the company, and generally the Court may, in any such proceedings, decide any question that it may be necessary or expedient to decide for the rectification of the register.

Imp. § 32.

**Notice of rectification of register.** 34. When any order has been made, rectifying the register, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar-General.

Imp. § 32.

**Register to be evidence.** 35. The register of members shall be prima facie evidence of any matters by this Ordinance directed or authorized to be inserted therein.

Imp. § 33.

#### *Liability of members.*

**Liability of present and past members of company.** 36. In the event of a company formed under this Ordinance being wound up, every present and past member of such company shall be liable to contribute to the assets of the company, to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, that is to say: 1. No past member shall be liable to contribute to the assets of the company, if he has ceased to be a member for a period of one year, or upwards, prior to the commencement of the winding-up. 2. No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member. 3. No

past member shall be liable to contribute to the assets of the company, unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance. 4. No contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member. 5. Nothing in this Ordinance contained shall invalidate any provision contained in any policy of insurance, or other contract, whereby the liability of individual members, upon any such policy or contract, is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract. 6. No sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor, not being a member of the company, but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

Imp. § 123.

### *Part III. Management and Administration.*

#### *Protection of creditors.*

**Registered office. 37.** Every company under this Ordinance shall have a registered office, to which all communications and notices may be addressed. If any company under this Ordinance carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Imp. § 62.

**Notice of situation of registered office. 38.** Notice of the situation of such registered office, and of any change therein, shall be given to the Registrar-General and recorded by him. Until such notice is given, the company shall not be deemed to have complied with the provisions of this Ordinance with respect to having a registered office.

Imp. § 62.

**Publication of name. 39.** Every company under this Ordinance shall paint, or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods, purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

Imp. § 63.

**Penalties on non-publication of name. 40.** If any company under this Ordinance does not paint or affix, and keep painted or affixed, its name in manner directed by this Ordinance, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director and manager of the company, who shall knowingly and wilfully authorize or permit such default, shall be liable to the like penalty; and if any director, manager, or officer of such company, or any person, on its behalf, uses, or authorize the use of any seal, purporting to be a seal of the company, whereon its name is not so engraven as aforesaid, or issues, or authorizes the issue of any notice, advertisement, or other official publication of such company, or signs or authorizes to be signed, on behalf of such company, any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued, any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds sterling, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Imp. § 63.

**Register of mortgages. 41.** Every company under this Ordinance shall keep a register of all mortgages and charges specifically affecting any property of the company, and shall enter in such register, in respect of each mortgage or charge, a short description of the property mortgaged or charged, the amount of charge created,



and the names of the mortgagees, or persons entitled to such charge. If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company, who knowingly or wilfully authorizes or permits the omission of such entry, shall incur a penalty not exceeding fifty pounds. The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty, any Judge may, by order, compel an immediate inspection of the register.

Imp. §§ 100, 101.

**Certain companies to publish statement. 42.** Every insurance company and deposit, provident, or benefit society under this Ordinance shall, before it commences business, and also on the first Monday in February, and the first Monday in August in every year during which it carries on business, make a statement in the form marked D in Schedule I of the Imperial Act 25 and 26 Vic. c. 89, or as near thereto as circumstances will admit, and a copy of such statement shall be put in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on, and if default is made in compliance with the provisions of this section, the company shall be liable to a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default, shall incur the like penalty. Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above-mentioned statement, on payment of a sum not exceeding one shilling.

Imp. § 108.

**Promissory notes and bills of exchange. 43.** A promissory note or bill of exchange shall be deemed to have been made, accepted, or endorsed on behalf of any company under this Ordinance, if made, accepted, or endorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or endorsed by, or on behalf, or on account of the company, by any person acting under the authority of the company.

Imp. § 77.

**Carrying on business with less than seven members. 44.** If any company under this Ordinance carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it is so carrying on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same without the joinder in the action or suit of any other member.

Imp. § 115.

#### *Protection of members.*

**General meeting. 45.** A general meeting of every company under this Ordinance shall be held once at the least in every year.

Imp. § 64.

**Regulations may be altered by special resolution. 46.** Subject to the provisions of this Ordinance, and to the conditions contained in the memorandum of association, any company formed under this Ordinance may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association, or in the table marked A in the first Schedule hereto, where such table is applicable to the company, or make new regulations to the exclusion of, or in addition to, all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Imp. § 13.

**Definition of special resolution. 47.** A resolution passed by a company under this Ordinance shall be deemed to be special, whenever a resolution has been passed

by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote, as may be present in person or by proxy (in cases where by the regulations of the company proxies are allowed) at any general meeting, of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote, as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than twenty-eight days from the date of the meeting at which such resolution was first passed. At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. Notice of any meeting shall for the purposes of this section be deemed to be duly given, and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company. In computing the majority under this section when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

Imp. § 69.

**Where no regulations as to meetings.** 48. In default of any regulations as to voting, every member shall have one vote, and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the first Schedule hereto, and in default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Imp. § 67.

**Registry of special resolutions.** 49. A copy of any special resolution that is passed by any company under this Ordinance shall be printed and forwarded to the Registrar-General and be recorded by him. If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 70.

**Copies of special resolutions.** 50. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same, on payment of one shilling, or such less sum as the company may direct; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default, shall incur the like penalty.

Imp. § 70.

**Execution of deeds abroad.** 51. Any company under this Ordinance may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place out of the Colony, and every deed signed by such attorney on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

Imp. § 78.

**Examination by inspectors.** 52. The Governor may appoint one or more competent inspectors to examine into the affairs of any company under this Ordinance, and to report thereon in such manner as the Governor may direct, upon the applica-



tion of members holding not less than one-fifth part of the whole shares of the company for the time being issued.

Imp. § 109, 1.

**Application for inspection to be supported by evidence.** 53. The application shall be supported by such evidence as the Governor may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; the Governor may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Imp. § 109, 2.

**Powers of inspectors.** 54. It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power. Any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence.

Imp. § 109 (3—5).

**Report of inspectors.** 55. Upon the conclusion of the examination, the inspectors shall report their opinion to the Governor. Such report shall be written or printed as the Governor directs. A copy shall be forwarded by the Governor to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them, or any one or more of them. All expenses of and incidental to any such examination shall be defrayed by the members upon whose application the inspectors were appointed, unless the Governor shall direct the same to be paid out of the assets of the company, which he is hereby authorized to do.

Imp. § 109 (6, 7).

**Company may appoint inspectors.** 56. Any company under this Ordinance may, by special resolution, appoint inspectors for the purpose of examining into the affairs of the company. The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Governor, with the exception that, instead of making their report to the Governor, they shall make the same in such manner and to such persons as the company in general meeting directs. And the officers and agents of the company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Governor.

Imp. § 110.

**Report of inspectors to be evidence.** 57. A copy of the report of any inspectors appointed under this Ordinance, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Imp. § 111.

#### *Notices.*

**Service on company.** 58. Any summons, notice, order, or other document required to be served upon the company may be served by leaving the same or sending it through the post in a prepaid letter addressed to the company at their registered office.

Imp. § 116.

**Notices by letter.** 59. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put, as a prepaid letter, into the post office.

**Authentication of notices.** 60. Any summons, notice, order, or proceeding, requiring authentication by the company, may be signed by any director, secretary, or other authorised officer of the company, and need not be under the common seal of the company, and the same may be in writing, or in print, or partly in writing and partly in print.

Imp. § 117.

*Legal proceedings.*

**Recovery of penalties. 61.** All offences under this Ordinance made punishable by any penalty may be prosecuted summarily before any Stipendiary Justice of the Peace having jurisdiction in the place.

Imp. § 276.

**Application of penalties. 62.** The Stipendiary Justice imposing any penalty under this Ordinance may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered, and subject to such direction, all penalties shall be paid into the Colonial Treasury, and shall form part of the revenue of the Colony.

Imp. § 277.

**Minutes of proceedings. Evidence. 63.** Every company under this Ordinance shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company, in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose, and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed, or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings: and until the contrary is proved, every general meeting of the company, or meeting of directors or managers in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened, and all resolutions passed thereat, or proceedings had, to have been duly passed and had, and all appointments of directors, managers, or liquidators shall be deemed to be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

Imp. § 71.

**Security for costs. 64.** Where any company under this Ordinance is plaintiff in any action, suit, or other legal proceeding, any Judge may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Imp. § 278.

**Declaration in action against members. 65.** In any action or suit brought by the company against any member to recover any call or other moneys due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made, or other moneys due, whereby an action or suit has accrued to the company.

*Forms.*

**Forms in Schedule. 66.** The forms set forth in the second Schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer. The Governor, with the advice and consent of the Legislative Council, may by resolution from time to time make alterations in the tables and forms contained in the first Schedule hereto (so that the amount of fees payable to the Registrar in the said Schedule mentioned be not thereby increased) and in the forms in the second Schedule, or make such additions to the last-mentioned forms as the Governor, with such advice and consent as aforesaid, may deem requisite. Any such table or form, when altered, shall be published in the *Royal Gazette*, and upon such publication being made, such table or form shall have the same force as if it were included in the Schedule to this Ordinance, but no alteration in the table marked A contained in the first Schedule shall affect any company registered prior to the date of such alteration, or repeal as respects such company, any portion of such table.

Imp. § 118.

*Arbitrations.*

**Arbitration. 67.** Any company under this Ordinance may, from time to time, by writing under its common seal, agree to refer, and may refer to arbitration any existing or future difference, question, or other matter whatsoever in dispute between itself and any other company or person, and the companies, parties to the arbitration, may delegate to the person or persons to whom the reference is made, power to settle



any terms, or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors, or other managing body of such companies.

Imp. § 119.

#### *Part IV. Winding-up of Companies or Associations.*

##### *Preliminary.*

**“Contributory.”** 68. The term “contributory” shall mean every person liable to contribute to the assets of a company under this Ordinance, in the event of the same being wound up; it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Imp. § 124.

**Liability of contributory.** 69. The liability of any person to contribute to the assets of a company under this Ordinance, in the event of the same being wound up, shall be deemed to create a debt of the nature of a specialty accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made, as hereinafter mentioned, for enforcing such liability, and it shall be lawful in the case of the bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls as well as calls already made.

Imp. § 125.

**Death of contributory.** 70. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs, and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly.

Imp. § 126.

**Bankruptcy of contributory.** 71. If any contributory becomes bankrupt, either before or after he has been placed upon the list of contributories, the official assignee shall be deemed to represent such bankrupt for all the purposes of the winding-up, and shall be deemed to be a contributory accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets, in due course of law, any moneys due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up.

Imp. § 127.

**Marriage of contributory.** 72. If any female contributory marries, either before or after she has been placed on the list of contributories, her husband shall, during the continuance of the marriage, be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly.

Imp. § 128.

##### *Winding-up by Court.*

**When company may be wound up.** 73. A company under this Ordinance may be wound up by the Supreme Court under the following circumstances, that is to say: 1. Whenever the company has passed a special resolution requiring the company to be wound up by the Court; 2. Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year; 3. Whenever the members are reduced in number to less than seven; 4. Whenever the company is unable to pay its debts; 5. Whenever the Court is of opinion that it is just and equitable that the company should be wound up.

Imp. § 129.

**When company deemed unable to pay its debts.** 74. A company under this Ordinance shall be deemed to be unable to pay its debts: 1. Whenever a creditor, by assignment or otherwise, to whom the company is indebted at law or in equity in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at their registered office, a demand under his hand, requiring the company to pay the sum so due, and the company has, for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor. 2. Whenever execution or other process issued on a judgment, decree, or order obtained in any Court in

favour of any creditor at law or in equity in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part. 3. Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts.

Imp. § 130.

**Application for winding-up to be made by petition. 75.** Any application to the Court for the winding-up of a company under this Ordinance shall be by petition. It may be presented by the company, or by one or more creditor or creditors, contributory or contributories of the company, or by all or any of the above parties, together or separately; and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Imp. §§ 137, 138.

**Commencement of winding-up. 76.** A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Imp. § 139.

**Court may grant injunction. 77.** The Court may at any time after the presentation of a petition for winding up a company under this Ordinance, and before making an order for winding up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceeding against the company, upon such terms as the Court thinks fit; the Court may also, at any time after the presentation of such petition and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the company.

Imp. §§ 140 (149, 2).

**Procedure on petition. 78.** Upon hearing the petition the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just.

Imp. § 141.

**Actions to be stayed after order for winding-up. 79.** When an order has been made for winding up a company no suit, action, or other proceeding shall be proceeded with or commenced against the company, except with the leave of the Court, and subject to such terms as the Court may impose.

Imp. § 142.

**Copy of order to be sent to Registrar-General. 80.** When an order has been made for winding up a company a copy of such order shall forthwith be forwarded by the company to the Registrar-General, who shall make a minute thereof in his books relating to the company.

Imp. § 143.

**Court may stay proceedings. 81.** The Court may at any time after an order has been made for winding up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Imp. § 144.

**Court may have regard to wishes of creditors or contributories. 82.** The Court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. In the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

Imp. § 145.

#### *Official liquidators.*

**Appointment of official liquidator. 83.** For the purpose of conducting the proceedings in winding up a company, and assisting the Court therein, there may be appointed a person or persons to be called an official liquidator or official liquidators;



and the Court may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators. In all cases if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons. The Court may also determine whether any and what security is to be given by any official liquidator on his appointment; or if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court.

**Imp. § 149.**

**Resignations, removals, vacancies, and remuneration. 84.** Any official liquidator may resign or may be removed by the Court on due cause shewn; and any vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court. There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the Court directs.

**Imp. § 149.**

**Style and duties of official liquidator. 85.** The official liquidator or liquidators shall be described by the style of official liquidator or official liquidators of the particular company in respect of which he is, or they are appointed, and not by his or their individual name or names; he or they shall take into his or their custody, or under his or their control, all the property, effects, and things in action to which the company is, or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the Court.

**Imp. § 149.**

**Powers of official liquidator. 86.** The official liquidator shall have power with the sanction of the Court, to do the following things. 1. To bring or defend any action, suit, or prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company. 2. To carry on the business of the company so far as shall be necessary for the beneficial winding-up of the same. 3. To sell the real and personal property, effects, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels. 4. To do all acts and to execute in the name and on behalf of the company all deeds, receipts, and other documents, and for that purpose to use when necessary the company's seal. 5. To prove, rank, claim, and draw a dividend, in the matter of the bankruptcy of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance in the matter of the bankruptcy as a separate debt due from such bankrupt, and rateably with the other separate creditors. 6. To draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making, or endorsing of every such bill of exchange or promissory note as aforesaid, on behalf of the company, shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf of such company, in the course of carrying on the business thereof. 7. To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory, or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself. 8. To do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

**Imp. § 151.**

**Discretion of official liquidator. 87.** The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court; and where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

**Imp. § 151.**

**Solicitor. 88.** The official liquidator may, with the sanction of the Court, appoint a solicitor to assist him in the performance of his duties.

Imp. § 151.

*Ordinary powers of Court.*

**List of contributories. Collection and application of assets. 89.** As soon as may be after making an order for winding up the company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Ordinance, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

Imp. § 163.

**Representative contributories. 90.** In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of, or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the Court thinks fit.

Imp. § 163.

**Court may require delivery of property. 91.** The Court may at any time after making an order for winding-up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

Imp. § 164.

**Court may order payment of debts by contributory. 92.** The Court may at any time after making an order for winding up the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents, to the company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this part of this Ordinance; provided that when all the creditors of any company are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls.

Imp. § 165.

**Court may make calls. 93.** The Court may at any time after making an order for winding up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories among themselves; and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Imp. § 166.

**Representative contributory not paying moneys ordered. 94.** If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory, or either of such estates, and of compelling payment thereof of the moneys due.

**Order to be conclusive evidence. 95.** Any order made by the Court in pursuance of this Ordinance upon any contributory shall, subject to any appeal against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid, are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

Imp. § 168.



**Exclusion of creditors not proving within certain time. 96.** The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Imp. § 169.

**Adjustment of rights of contributories. 97.** The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled.

Imp. § 170.

**Costs. 98.** The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding up the company, in such order of priority as the Court thinks just.

Imp. § 171.

**Dissolution of company. 99.** When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

Imp. § 172 (1).

**Minute of dissolution. 100.** Any order so made shall be reported by the official liquidator to the Registrar-General, who shall make a minute accordingly in his books of the dissolution of such company.

Imp. § 172 (2).

**Not reporting dissolution of company. 101.** If the official liquidator makes default in reporting to the Registrar-General, in the case of a company being wound up by the Court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default.

Imp. § 172 (3).

**Petition to be *lis pendens*. 102.** Any petition for winding up a company by the Court under this Ordinance shall constitute a *lis pendens* within the terms of the *Purchasers and Mortgagees and Protection Ordinance*; provided the same is duly registered in manner required by such Ordinance.

#### *Extraordinary powers of Court.*

**Court may summon persons suspected of having property of company. 103.** The Court may, after it has made an order for winding up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company, and the Court may require any such officer or person to produce any books, papers, deeds, writings or, other documents in his custody or power relating to the company, and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it) the Court may cause such person to be apprehended and brought before the Court for examination; nevertheless, in cases where any person claims any lien on papers, deeds, or writings, or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Imp. § 174.

**Examination of parties by Court. 104.** The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid, concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Imp. § 174.

**Arrest of contributory about to abscond or remove or conceal property. 105.** The Court may, at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the Colony, or to remove or conceal any of his goods or chattels for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods, and chattels

to be seized, and him and them to be safely kept until such time as the Court may order.

Imp. § 176.

**Powers of Court. 106.** Any powers by this Ordinance conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting either at law or in equity of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

Imp. § 177.

*Enforcement of orders.*

**Power to enforce orders. 107.** All orders made by the Supreme Court under this Ordinance may be enforced in the same manner in which orders of such Court made in any suit pending therein may be enforced.

Imp. § 178.

**Affidavits, etc. 108.** Any affidavit, affirmation, or declaration required to be sworn or made under the provisions of this Ordinance may be lawfully sworn or made in Great Britain or Ireland, or in any colony, island, plantation, or place under the dominion of His Majesty, before any Court, Judge, or person lawfully authorized to take and receive affidavits, affirmations, or declarations, or before any of His Majesty's consuls or vice-consuls in any foreign parts out of His Majesty's dominions, and the Court shall take judicial notice of the seal, or stamp, or signature (as the case may be), of any such Court, Judge, person, consul, or vice-consul, attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purpose of this part of the Ordinance.

Imp. § 228.

*Voluntary winding-up of a company.*

**When company may be wound up voluntarily. 109.** A company under this Ordinance may be wound up voluntarily: 1. Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily. 2. Whenever the company has passed a special resolution requiring the company to be wound-up voluntarily. 3. Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same. For the purposes of this Ordinance, any resolution shall be deemed to be extraordinary, which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.

Imp. § 182.

**Commencement of winding-up. 110.** A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up.

Imp. § 183.

**Effect of voluntary winding-up. 111.** Whenever a company is wound up voluntarily, the company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof; and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company, taking place after the commencement of such winding-up, shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.

Imp. § 184.

**Notice of resolution to wind up. 112.** Notice of any special resolution or extraordinary resolution passed for winding up a company voluntarily shall be given by advertisement in the *Royal Gazette*, and at least one other newspaper circulating in the Colony.

Imp. § 185.

**Consequences of voluntary winding-up. 113.** The following consequences shall ensue upon the voluntary winding-up of a company. 1. The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto shall,



unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company. 2. Liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property. 3. The company, in general meeting, shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him. 4. If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him. 5. Upon the appointment of liquidators all the powers of the directors shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers. 6. When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two. 7. The liquidators may without the sanction of the Court, exercise all powers by this Ordinance given to the official liquidator. 8. The liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company, and any list so settled shall be prima facie evidence of the liability of the persons named therein to be contributories. 9. The liquidators may, at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same. 10. The liquidators shall pay the debts of the company, and adjust the rights of the contributories amongst themselves.

Imp. § 186.

**Company may delegate authority to appoint liquidators. 114.** A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators, or any of them and supplying any vacancies in the appointment of liquidators, or may, by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised, and any act done by the creditors, in pursuance of such delegated power, shall have the same effect as if it had been done by the company.

Imp. § 190.

**Arrangement when binding on creditors. 115.** Any arrangement entered into between a company about to be wound up voluntarily or in the course of being wound up voluntarily, and its creditors, shall be binding on the company, if sanctioned by an extraordinary resolution, and on the creditors, if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Imp. § 191.

**Creditor or contributory may appeal. 116.** Any creditor or contributory of a company that has, in manner aforesaid, entered into any arrangement with its creditors, may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Imp. § 191.

**Liquidators or contributories in voluntary winding-up may apply to Court. 117.** Where a company is being wound up voluntarily, the liquidators or any contributory of the company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court: and the Court in the case aforesaid, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede wholly or partially to such application on such terms and subject to such conditions as the Court thinks

fit, or it may make such other order or decree on such application as the Court thinks just.

**Imp. § 193.**

**Liquidators may call general meeting. 118.** Where a company is being wound up voluntarily, the liquidators may, from time to time during the continuance of such winding-up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution or for any other purposes they think fit, and in the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.

**Imp. § 194.**

**Filling up vacancy in liquidators. 119.** If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation, or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held, if held in manner prescribed by the regulations of the company or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the Court.

**Imp. § 189.**

**Court may appoint liquidators. 120.** If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator or liquidators: the Court may also, on due cause shewn, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up.

**Imp. § 186.**

**Liquidators on conclusion of winding-up to make up an account. 121.** As soon as the affairs of the company are fully wound up the liquidators shall make up an account shewing the manner in which such winding-up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators: the meeting shall be called by advertisement specifying the time, place, and object of such meeting, and such advertisement shall be published one month at least previously to the meeting, in the *Royal Gazette*, and at least one other newspaper circulating in the Colony.

**Imp. § 195.**

**Liquidators to report meeting to Registrar-General. 122.** The liquidators shall make a return to the Registrar-General of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return, the company shall be deemed to be dissolved; if the liquidators make default in making such return to the Registrar-General, they shall incur a penalty not exceeding five pounds for every day during which such default continues.

**Imp. § 195.**

**Costs of voluntary winding-up. 123.** All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

**Imp. § 196.**

**Saving of rights of creditors. 124.** The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

**Imp. § 197.**

**Court may adopt proceedings of voluntary winding-up. 125.** Where a company is in course of being wound up voluntarily and proceedings are taken for having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in



such order, or in any other order, for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Imp. § 198.

*Winding-up subject to the supervision of the Court.*

**Court may direct winding-up subject to supervision. 126.** When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.

Imp. § 199.

**Petition for winding-up subject to supervision. 127.** A petition, praying wholly or in part, that the voluntary winding-up shall continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding-up the company by the Court.

Imp. § 200.

**Court may have regard to wishes of creditors or contributories. 128.** The Court may, in determining whether a company is to be wound up altogether by the Court, or subject to the supervision of the Court, in the appointment of liquidator or liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. In the case of creditors, regard shall be had to the value of the debts due to each creditor, and in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company.

Imp. § 201.

**Court may appoint additional liquidators in winding-up subject to supervision. 129.** Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators: and any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company. The Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Imp. § 202.

**Effect of order for winding-up subject to supervision. 130.** Where an order is made for a winding-up subject to the supervision of the Court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all their powers without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily; but, save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court, shall, for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order of the Court for winding-up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators and to exercise all other powers which it might have exercised if an order had been made for winding-up the company altogether by the Court, and in the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to, or in favour of the official liquidators, the expression "official liquidators" shall be deemed to mean the liquidators conducting the winding-up subject to the supervision of the Court.

Imp. § 203.

**Appointment of voluntary liquidators to office of official liquidators. 131.** Where an order has been made for the winding-up of a company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the Court may, in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either

provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.

Imp. § 204.

*Supplemental provisions.*

**Dispositions after the commencement of the winding-up avoided.** 132. Where any company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property, effects, and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company, made between the commencement of the winding-up and the order for winding-up, shall, unless the Court orders otherwise, be void.

Imp. § 205.

**Books of company to be evidence.** 133. Where any company is being wound up, all books, accounts, and documents of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

Imp. § 220.

**Disposal of books, accounts, and documents.** 134. Where any company has been wound up under this Ordinance and is about to be dissolved, the books, accounts, and documents of the company and of the liquidators may be disposed of in the following way, that is to say: where the company has been wound up by or subject to the supervision of the Court, in such way as the Court directs, and where the company has been wound up voluntarily, in such way as the company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the company, or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same, or any of them, cannot be made forthcoming to any party or parties claiming to be interested therein.

Imp. § 222.

**Inspection of books.** 135. Where an order has been made for winding up a company by the Court, or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors and contributories in conformity with the order of the Court, but not further or otherwise.

Imp. § 221.

**Power of assignee to sue.** 136. Any person to whom any thing in action belonging to the company is assigned in pursuance of this Ordinance, may bring or defend an action or suit relating to such thing in action in his own name.

**Debts to be proved.** 137. In the event of any company being wound up under this Ordinance, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Imp. § 206.

**General scheme of liquidation may be sanctioned.** 138. The liquidators may, with the sanction of the Court where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

Imp. § 214.

**Power to compromise.** 139. The liquidators may, with the sanction of the Court where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company where the company is being wound-up altogether voluntarily, compromise all calls and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages subsisting or sup-



posed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company, or the winding-up of the company, upon the receipt of such sums payable at such times, and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Imp. § 214.

**Liquidators may accept shares, etc., as consideration for sale of property of company. 140.** Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale, shares, policies or other like interests, in such other company, for the purpose of distribution amongst the members of the company being wound-up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators, in pursuance of this section, shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound-up who has not voted in favour of the special resolution passed by the company of which he is a member, at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing, addressed to the liquidators, or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things, as the liquidators may prefer, that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved and to be raised by the liquidators, in such manner as may be determined by special resolution. No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to, or concurrently with any resolution for winding-up the company or for appointing liquidators; but if an order be made within a year for winding up the company by, or subject to the supervision of the Court, such resolution shall not be of any validity, unless it is sanctioned by the Court.

Imp. § 192.

**Determining price. 141.** The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration.

Imp. § 192 (3).

**Certain attachments, sequestrations and executions to be void. 142.** Where any company is being wound-up by the Court, or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents.

Imp. § 211.

**Fraudulent preference. 143.** Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Ordinance, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly; and any conveyance or assignment made by any company formed under this Ordinance of all estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

Imp. § 210.

**Court may assess damages against delinquent directors and officers. 144.** Where in the course of the winding-up of any company under this Ordinance, it appears that any past or present director, manager, or official or other liquidator, or any officer of such company, has misapplied or retained in his own hands, or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sum of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

Imp. § 215.

**Falsification of books. 145.** If any director, officer, or contributory of any company wound up under this Ordinance, destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes, or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanour, and upon being convicted, shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Imp. § 216.

**Prosecution of delinquent director, etc.; winding-up by Court. 146.** Where any order is made for winding up a company by the Court, or subject to the supervision of the Court, if it appear, in the course of such winding-up, that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidators or the liquidator (as the case may be) to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

Imp. § 217 (1).

**Prosecution of delinquent directors, etc., in case of voluntary winding-up. 147.** Where a company is being wound-up altogether voluntarily, if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the Court, to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Imp. § 217 (2).

**Perjury. 148.** If any person, upon any examination upon oath or affirmation authorized under this Ordinance, or in any affidavit, deposition, or solemn affirmation in or about the winding-up of any company under this Ordinance, or otherwise in or about any matter arising under this Ordinance, wilfully and corruptly gives false evidence, he shall upon conviction be liable to the penalties of wilful perjury.

Imp. § 218.

### *Schedule I.*

#### **Table A. Regulations for Management.**

##### *Shares.*

1. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.
2. Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.
3. If such certificate is worn out or lost, it may be renewed on payment of one shilling, or such less sum as the company in general meeting may prescribe.



*Calls on shares.*

4. The directors may, from time to time, make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice, at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

5. A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

6. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of eight pounds per centum per annum from the day appointed for the payment thereof to the time of the actual payment.

7. The directors may, if they think fit, receive from any member, willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

*Transfers of shares.*

8. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

9. Shares in the company shall be transferred in the following form:

I, A.B., of                      in consideration of the sum of                      pounds paid to me by C.D., of                      , do hereby transfer to the said C.D. the share (or shares) numbered                      standing in my name in the books of the                      company, limited, to hold unto the said C.D., his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof, and I, the said C.D., do hereby agree to take the said share (or shares) subject to the same conditions.

As witness our hands the                      day of                      (And the signature of the transferor or transferee to such transfer shall be attested by one or more witness or witnesses.)

10. The company may decline to register any transfer of shares made by a member who is indebted to them.

11. The transfer book shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

*Transmission of shares.*

12. The executors or administrators of a deceased member shall be the only persons recognised by the company as having any title to his share.

13. Any person becoming entitled to a share in consequence of the death or bankruptcy of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

14. Any person who has become entitled to a share in consequence of the death or bankruptcy of any member or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

15. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

16. The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

*Forfeitures of shares.*

17. If any member fails to pay any call on the day appointed for payment thereof, the directors may at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call together with interest and any expenses that may have accrued by reason of such non-payment.

18. The notice shall name a further day, on or before which such call and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made, the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable. The notice shall also state that in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

19. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may, at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

20. Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

21. Any member whose shares have been forfeited, shall, notwithstanding, be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

22. A declaration in writing made before any Judge of the Supreme Court or before any Stipendiary Justice, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

*Conversion of shares into stock.*

23. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

24. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests in the same manner and subject to the same regulations as, and subject to which, any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

25. The several holders of stock shall be entitled to participate in the dividends and profits of the company, according to the amount of their respective interests in such stock, and such interests shall in proportion to the amount thereof confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company and for other purposes as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

*Increase in capital.*

26. The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

27. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time on the receipt of an intimation from the member to whom such notice is given, that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

28. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

*General meetings.*

29. The first general meeting shall be held at such time, not being more than six months after the registration of the company, and at such place as the directors may determine.

30. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting, and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year at such place as may be determined by the directors.

31. The above mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

32. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

33. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

34. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionist or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

*Proceedings at general meetings.*

35. Seven days' notice at least, specifying the place, the day, and the hour of meeting, and in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.



36. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance sheets, and the ordinary report of the directors.

37. No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows, that is to say: If any persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after every fifty, with this limitation that no quorum shall in any case exceed twenty.

38. If within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place, and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*.

39. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

40. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

41. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

42. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman, that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

43. If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of any equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

#### *Votes of members.*

44. Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

45. If any member is a lunatic or idiot, he may vote by his committee.

46. If two or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

47. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

48. Votes may be given either personally or by proxy.

49. The instrument appointing a proxy shall be in writing, under the hand of the appointer, or if such appointer is a corporation, under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the company.

50. The instrument appointing a proxy shall be deposited at the registered office of the company, not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

51. Any instrument appointing a proxy shall be in the following form:

I, \_\_\_\_\_ of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ being a member of the \_\_\_\_\_ company limited, and entitled to \_\_\_\_\_ vote or votes, hereby appoint \_\_\_\_\_ of \_\_\_\_\_ as my proxy, to vote for me and on my behalf at the ordinary (or extraordinary *as the case may be*) general meeting of the company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof (or, at any meeting of the company that may be held in the year \_\_\_\_\_) As witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ Signed by the said \_\_\_\_\_ in the presence of \_\_\_\_\_

#### *Directors.*

52. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

53. Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

54. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

*Powers of directors.*

55. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company, as are not by the foregoing Ordinance or by these articles required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Ordinance, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

56. The continuing directors may act notwithstanding any vacancy in their body.

*Disqualification of directors.*

57. The office of director shall be vacated if he holds any other office or place of profit under the company, or if he becomes bankrupt or if he is concerned in or participates in the profits of any contract with the company. But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for the company of which he is a director; nevertheless he shall not vote in respect of such contract or work, and if he does so vote, his vote shall not be counted.

*Rotation of directors.*

58. At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three then the number nearest to one-third, shall retire from office.

59. The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year the one-third or other nearest number who have been longest in office shall retire.

60. A retiring director shall be re-eligible.

61. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

62. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place, and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

63. The company may, from time to time in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

64. Any casual vacancy occurring in the board of directors may be filled up by the directors; but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

65. The company, in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may, by an ordinary resolution, appoint another person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

*Proceedings of directors.*

66. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, at any time, summon a meeting of the directors.

67. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

68. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

69. A committee may elect a chairman of their meetings; if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

70. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.



71. All acts done by any meeting of the directors, or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

#### *Dividends.*

72. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

73. No dividend shall be payable except out of the profits arising from the business of the company.

74. The directors may, before recommending any dividend, set aside out of the profits of the company, such sum as they think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company or any part thereof; and the directors may invest the sum so set apart as a reserve fund upon such securities as they may select.

75. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

76. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

77. No dividend shall bear interest as against the company.

#### *Accounts.*

78. The directors shall cause true accounts to be kept: Of the stock-in-trade of the company; Of the sums of money received and expended by the company, and the matters in respect of which such receipt and expenditure take place; and Of the credits and liabilities of the company. The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

79. Once at the least in every year, the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

80. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters; every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may, in fairness, be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

81. A balance-sheet shall be made out in every year, and laid before the company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

82. A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

#### *Audit.*

83. Once at least in every year the accounts of the company shall be examined, and the correctness of the balance-sheet ascertained, by one or more auditor or auditors.

84. The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the company in general meeting.

85. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

86. The auditors may be members of the company, but no person shall be eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company shall be eligible during his continuance in office.

87. The election of auditors shall be made by the company at their ordinary meeting in each year.

88. The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

89. Any auditor shall be re-eligible on his quitting office.

90. If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

91. If no election of auditors is made in manner aforesaid, the Governor may, on the application of not less than five members of the company, appoint an auditor for the current year and fix the remuneration to be paid to him by the company for his services.

Dr. Balance Sheet of the Company made up to 19 Cr.

Capital and Liabilities.		Property and Assets.	
	Showing:		Showing:
I. Capital.	1 The number of shares . . . . .	7 Immovable property distinguishing:	
	2 The amount paid per share . . . . .	a) Freehold land . . . . .	
	3 If any arrears of calls, the nature of arrears and the names of the defaulters . . . . .	b) Freehold buildings . . . . .	
	4 The particulars of any forfeited shares . . . . .	c) Leasehold . . . . .	
		8 Moveable property distinguishing:	
		d) Stock-in-trade . . . . .	
II. Debts and liabilities of the company.	5 The amount of loans and mortgages or debenture bonds . . . . .	e) Plant . . . . .	
	6 The amount of debts owing by the company distinguishing . . . . .	The cost to be stated with deductions for deterioration in value as charged to the reserve fund or profit and loss . . . . .	
	a) Debts for which acceptances have been given . . . . .	Showing:	
	b) Debts to tradesmen for supplies of stock-in-trade or other articles . . . . .	9 Debts considered good for which the company hold bills or other securities . . . . .	
	c) Debts for law expenses . . . . .	10 Debts considered good for which the company hold no security . . . . .	
	d) Debts for interest on debentures or other loans . . . . .	11 Debts considered doubtful and bad . . . . .	
	e) Unclaimed dividends . . . . .	Any debt due from a director or other officer of the company to be separately stated . . . . .	
	f) Debts not enumerated above . . . . .	Showing:	
VI. Reserve fund.	Showing:	12 The nature of investment and rate of interest . . . . .	
	The amount set aside from profits to meet contingencies . . . . .	13 The amount of cash, where lodged and if bearing interest . . . . .	
VII Profit and Loss.	The disposable balance for payment of dividend, etc. . . . .		
Contingent liabilities.	Claims against the company not acknowledged as debts . . . . .		
	Moneys for which the company is contingently liable . . . . .		



92. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

93. Every auditor shall have a list delivered to him of all books kept by the company and shall, at all reasonable times, have access to the books and accounts of the company. He may at the expense of the company employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.

94. The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read, together with the report of the directors, at the ordinary meeting.

#### Notices.

95. A notice may be served by the company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

96. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such shares.

97. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

**Table B. Fees to be paid to the Registrar-General.**

	£	s.	d.
Registration of a company whose nominal capital does not exceed £2,000 . . . . .	2	0	0
Registration of a company whose nominal capital exceeds £2,000, the above fee of £2, with the following additional fees regulated according to the amount of nominal capital (that is to say):			
For every £1,000 of nominal capital or part of £1,000 after the first £2,000 up to £5,000. . . . .	1	0	0
For every £1,000 of nominal capital or part of £1,000 after the first £5,000 up to £100,000. . . . .	0	5	0
For every £1,000 of nominal capital or part of £1,000 after the first £100,000	0	1	0
Registration of any increase of capital made after the first registration of the company, the same fees per £1,000, or part of a £1,000 as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Registering any document hereby required or authorized to be registered, other than the memorandum of association . . . . .	0	1	5
Making a record of any fact hereby authorized or required to be recorded by the Registrar-General a fee of . . . . .	0	5	0

#### Schedule II.

##### Form A.

Summary of capital and shares of the company made up to the 11 day of 19 .

Nominal capital divided into shares of £ each

Number of shares taken up to the day of

There has been called up on each share £

Total amount of calls received £

Total amount of calls unpaid £

Total amount of shares forfeited

List of persons holding shares in the company, on the day of and of persons who have held shares thereon at any time during the year immediately preceding the said day of showing their names and addresses, and an account of the shares so held.

Folio in Register Leger containing Particulars.	Names, Addresses and Occupations.				Account of Shares.				Remarks.
	Surname.	Christian Name.	Address.	Occupation.	Shares held by existing members on the    day of    19 .	Additional shares held by existing members during preceding year.		Shares held by persons no longer members.	
						Number.	Date of Transfer.	Number.	

Form B. Memorandum of association of a company limited.

- 1st. The name of the company is the                      company limited.
- 2nd. The registered office of the company will be situate in
- 3rd. The objects for which the company is established are                       
and the doing all such other things as are incidental  
or conducive to the attainment of the above objects.
- 4th. The liability of the members is limited.
- 5th. The capital of the company is                      pounds divided into                      shares  
of                      pounds each.
- We, the several persons, whose names and addresses are subscribed, are desirous of being  
formed into a company in pursuance of this memorandum of association, and we re-  
spectively agree to take the number of shares in the capital of the company set opposite  
to our respective names.

Names, addresses and descriptions of subscribers.				Number of shares taken by each subscriber.
1. John Jones of	in the	of	Merchant	200
2. John Smith of	in the	of	"	25
3. Thomas Green of	in the	of	"	30
4. John Thompson of	in the	of	"	40
5. Caleb White of	in the	of	"	15
6. Andrew Brown of	in the	of	"	5
7. Caesar White of	in the	of	"	10
Total shares taken . . . . .				325

Dated the                      day of                      19 .  
Witness to the above signatures,  
A.B., No.                      Street,  
Port-of-Spain, Trinidad.

b) No. 71. An Ordinance to authorize Companies registered under the Companies Ordinance to keep Local Registers of their Members in British Colonies.

**Short title.** 1. This Ordinance may be cited as the *Companies (Branch Registers) Ordinance*. And this Ordinance shall so far as is consistent with the tenor thereof be construed as one with the Companies Ordinances, Nos. 68, 69, and 70, and the said Ordinances an this Ordinance may be cited together as the *Companies Ordinances*.

**Interpretation.** 2. In this Ordinance the term "company" means a company registered under the *Companies Ordinance*, and having a capital divided into shares; the term "shares" includes stock; the term "Colony" includes such territories as may from time to time be vested in His Majesty by virtue of an Act of Parliament for the Government of India, and any plantation, territory, or settlement situate elsewhere within His Majesty's dominions.

**Branch registers.** 3. 1. Any company whose objects comprise the transaction of business in any Colony may, if authorized to do so by its regulations, as originally



framed or as altered by special resolution, cause to be kept in any Colony in which it transacts business, a branch register or registers of members resident in any such Colony. 2. The company shall give to the Registrar-General notice of the situation of the office where any such branch register is kept and of any change therein, and of the discontinuance of any such office in the event of the same being discontinued. 3. A branch register shall, as regards the particulars entered, be deemed to be a part of the company's register of members, and shall be *prima facie* evidence of all particulars entered therein. Any such register shall be kept in the manner provided by the *Companies Ordinance*, with this qualification, that the advertisement mentioned in section 31 of the *Companies Ordinance* shall be inserted in some newspaper circulating in the district wherein the register to be closed is kept, and that any competent Court in the Colony where such register is kept shall be entitled to exercise the same jurisdiction of rectifying the same as is by section 33 of the *Companies Ordinance* vested, as respects a register in the Colony of Trinidad and Tobago, in the Supreme Court, and that all offences under section 30 of the *Companies Ordinance* may, as regards a branch register, be prosecuted summarily before any tribunal having summary criminal jurisdiction in the Colony where such register is kept. 4. The company shall transmit to its registered office a copy of every entry in its branch register or registers as soon as may be after such entry is made, and the company shall cause to be kept at its registered office, duly entered up from time to time, a duplicate or duplicates of its branch register or registers. The provisions of section 30 of the *Companies Ordinance* shall apply to every such duplicate, and every such duplicate shall for all the purposes of the *Companies Ordinance* be deemed to be part of the register of members of the company. 5. Subject to the provisions of this Ordinance with respect to the duplicate register, the shares registered in a branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register shall, during the continuance of the registration of such shares in such branch register, be registered in any other register. 6. The company may discontinue to keep any branch register, and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the same Colony or to the register of members kept at the registered office of the company. 7. Subject to the provisions of this Ordinance, any company may by its regulations as originally framed or as altered by special resolution make such provisions as it may think fit respecting the keeping of branch registers.

Imp. §§ 34, 35.

### c) No. 23 of 1907. An Ordinance relating to Trading Companies Incorporated Abroad (8th April, 1907).

**Short title.** 1. This Ordinance may be cited as the *British and Foreign Companies Ordinance, 1907*.

**Repeal.** 2. The *English Companies Ordinance* (No. 68) is hereby repealed.

**Evidence of incorporation.** 3. It shall be lawful for any trading company or corporation registered under any statute for the time being in force in Great Britain or Ireland or in any British possession or in the United States of North America, to deliver to the Registrar-General of this Colony to be registered by him, a certificate of incorporation of such company under the hand of the person for the time being authorized to keep the register of such company at the place at which such company shall have been registered, or a copy of such certificate of incorporation proved to be a true and correct copy by the oath or solemn declaration of the secretary or other officer of such company sworn or made before a notary public or before the mayor or other chief magistrate of any city, town, or borough in Great Britain or Ireland or in any British possession, and in the United States of America before a notary public. Such certificate or copy of a certificate duly registered or any office copy thereof certified by the Registrar-General of this Colony shall be conclusive evidence before all Courts in this Colony of the incorporation of such company.

**Proof of memorandum and articles of association.** 4. It shall be lawful for any such company to deliver to the Registrar-General of this Colony to be registered by him, a copy of the memorandum of association and a copy of the articles of association registered by such company and proved to be true and correct copies by the oath or

solemn declaration of the secretary or other officer of such company, sworn or made before a notary public or before the mayor or other chief magistrate of any city, town, or borough in Great Britain or Ireland or in any British possession; and in the United States of North America before a notary public; and every such copy duly registered by the said Registrar-General or any office copy thereof certified by him shall be conclusive evidence before all Courts in this Colony of such memorandum of association and articles of association respectively, and of the signing thereof by the persons by whom the same shall respectively purport to be signed.

**Deeds executed out of the Colony. 5.** Any deed of any such company which may be executed out of this Colony may be registered in this Colony if executed under the common seal of such company in the presence of one witness at least; and the execution of such deed, and that the seal thereto affixed is the common seal of the company, and that the same was affixed thereto by the authority of the board of directors or managers of such company and in conformity with the articles of association of such company, and the signatures of the directors or managers to any such deed (where such signatures are required by the articles of association of such company) and the signature to such deed of the secretary or other officer by whom such seal may have been affixed, may be proved by the affidavit or solemn declaration of one of such witnesses or of the secretary or other officer affixing such seal, to be sworn or made before a notary public or before the mayor or other chief magistrate of any city, town, or borough in Great Britain or Ireland or in any British possession, and in the United States of North America before a notary public.

**Deeds executed in the Colony. 6.** Every deed made in this Colony on behalf of any such company and executed under the hand of any person empowered by instrument in writing under the common seal of such company either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in this Colony, shall be binding on such company and have the same effect as if it were under the common seal of the company.

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### Bills of Lading.

#### No. 85. An Ordinance relating to Bills of Lading.

[This Ordinance is identical in all material respects with the Imperial *Bills of Lading Act*, (18 & 19 Vic. c. 111)].

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### Sale of Goods.

#### No. 64. An Ordinance relating to the Sale of Goods.

[This Ordinance is identical in all material respects with the Imperial *Sales of Goods Act*, 1893, (56 & 57 Vic. c. 71.) There are no provisions relating to market overt.]

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### Bills of Exchange.

#### a) No. 62. An Ordinance relating to Bills of Exchange, Cheques, and Promissory Notes.

[This Act is identical in all material respects with the Imperial *Bills of Exchange Act*, 1882. (45 & 46 Vic. c. 61)]. In the case of a bill dishonoured abroad, in lieu of the damages allowed under the Imperial Act the holder or the drawer or an indorser who has been compelled to pay the bill may recover from any person liable to him the amount of the bill, the expenses of noting and protest, the interest from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case, and a sum equal to eight per cent. of the amount of the bill. § 95 contains the following provisions: Where any person, signing in characters



which are not European or by a mark, signs a bill of exchange for a sum not exceeding one hundred pounds as drawer, acceptor, or indorser, such signature shall have no effect whatever, unless it is made in the presence of and attested by the protector, sub-protector, or any inspector of immigrants, justice of the peace, clerk of the peace, warden, minister of religion, government medical officer, commissioned and non-commissioned officer of police, or by a person being or acting as the proprietor or manager of an estate employing indentured immigrants. Any one attesting a signature under this section shall first satisfy as to the identity of the party signing, and ascertain that such party understands the nature and effect of the instrument which he signs.

Acceptances of bills of exchange must be in writing on the bill itself, or in the case of bills drawn in a set on one part thereof. — Ord. No. 83, § 5.

**b) No. 31 of 1907. An Ordinance to amend Section 82 of the Bills of Exchange Ordinance, No. 62 (23d December, 1907).**

[This Ordinance is substantially identical with the provisions of the Imperial *Bills of Exchange (Crossed Cheques) Act, 1906*, (6 Edw. 7, c. 17)].

**Public Holidays.**

**No. 121. An Ordinance relating to Public Holidays.**

1. This Ordinance may be cited as the *Public Holidays Ordinance*.

2. The several days in the Schedule to this Ordinance mentioned (which days are hereinafter referred to as public holidays) shall be kept as close holidays in all public offices and banks in this Colony.

3. All bills of exchange and promissory notes which are due and payable on any such public holiday shall be payable, and in case of non-payment may be noted and protested on the next following day, and not on such public holiday; and any such noting shall be as valid as if made on the day on which the bill or note was made due and payable; and for all the purposes of this Ordinance the day next following a public holiday shall mean the next following day on which a bill of exchange may be lawfully noted or protested.

4. Where the day on which any notice of dishonour of an unpaid bill of exchange or promissory note should be given, or when the day on which a bill of exchange or promissory note should be presented or received for acceptance, or accepted or forwarded to any referee or referees, is a public holiday, such notice of dishonour shall be given, and such bill of exchange or promissory note shall be presented or forwarded on the day next following such public holiday.

5. No person shall be compellable to make any payment or do any act upon such public holiday which he would not be compellable to do or make on Christmas Day or Good Friday; and the obligation to make such payment and do such act shall apply to the day following such public holiday, and the making of such payment and doing such act on such following day shall be equivalent to payment of the money or performance of the act on the public holiday.

6. It shall be lawful for the Governor from time to time, as he may see fit, by Proclamation under the public seal of the Colony to appoint a special day to be kept as a close holiday in all public offices and in all banks in the Colony; and every day so appointed shall as regards bills of exchange and promissory notes be deemed to be a public holiday for all the purposes of this Ordinance.

*Schedule.*

New Years Day, or if that day falls on a Sunday the next following Monday.

Easter Monday.

Whit Monday.

The Festival of Corpus Christi.

The day appointed to be kept as the Sovereign's birthday.

The day after Christmas Day, when Christmas day falls on a Sunday.

## Bankruptcy.

**a) No. 8 of 1907. An Ordinance to amend and consolidate the Law relating to the Administration of the Estates of Bankrupts and Insolvent Persons (27th February, 1907).<sup>1)</sup>**

### Preliminary.

**Short title.** 1. This Ordinance may be cited as *The Bankruptcy Ordinance, 1907.*  
Imp. § 1.

**Commencement.** 2. This Ordinance shall come into force and be deemed to commence on such day as the Governor may by Proclamation appoint.

Imp. § 3.

**Interpretation of terms.** 3. 1. In this Ordinance unless the context otherwise requires: "The Court" means the Supreme Court of Judicature having and exercising jurisdiction in bankruptcy under this Ordinance. "Affidavit" includes affirmations and statutory declarations. "Oath" includes affirmations and statutory declarations. "Available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made. "Debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Ordinance made provable in bankruptcy. "Gazetted" means published in the *Royal Gazette*. "Rules" means the rules in the sixth Schedule hereto, and any other rules made under the authority of this Ordinance, and includes forms. "Goods" includes all chattels personal. "Ordinary resolution" means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of the creditors and voting on the resolution. "Special resolution" means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution. "Person" includes a body of persons, corporate or unincorporate. "Prescribed" means prescribed by the rules. "Property" includes money, goods, things in action, land, and every description of property, whether real or personal, also obligations, easements and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined. "Registrar" means Registrar of the Supreme Court. "Resolution" means ordinary resolution. "Secured creditor" means a person holding a mortgage charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor. "Marshal" includes any officer charged with the execution of a writ or other process. "Trustee" means the trustee in bankruptcy of a debtor's estate. 2. The Schedules to this Ordinance shall be construed and have effect as part of this Ordinance.

Imp. § 168.

**Jurisdiction of the Court.** 4. The Supreme Court of Judicature as constituted and established under the *Judicature Ordinance*, No. 34, shall in addition to the jurisdiction and powers thereby conferred have and exercise an exclusive jurisdiction within this Colony in respect of bankrupts and matters of bankruptcy; and such jurisdiction shall be exercised under and subject to the provisions of this Ordinance and of the rules.

## *Part I. Proceedings from Act of Bankruptcy to Discharge.*

### *Acts of bankruptcy.*

**Acts of bankruptcy. Form of notice.** 5. 1. A debtor commits an act of bankruptcy in each of the following cases: a) If in this Colony or elsewhere, he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally; b) If in this Colony or elsewhere, he makes a fraudulent conveyance, gift, delivery, or transfer of his property or any part thereof; c) If in this Colony or elsewhere, he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this or any other enactment be void as a fraudulent preference if he were adjudged bankrupt; d) If with intent

<sup>1)</sup> The references (Imp.) in the notes are to the Imperial Bankruptcy Act, 1883 (46 & 47 Vic. c. 52), unless otherwise indicated.



to defeat or delay his creditors, he departs from this Colony, or being out of this Colony remains out of this Colony, or departs from his dwelling-house, or otherwise absents himself or begins to keep house; e) If execution against him has been levied by seizure of his goods under process in an action in any Court, or in any proceedings in the Supreme Court, and the goods have either been sold or held by the marshal for twenty-one days. Provided that when an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the marshal is ordered to withdraw, or any interpleader issue ordered thereon is finally disposed of, shall not be taken into account in calculating such period of twenty-one days; f) If he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself; g) If a creditor has obtained a final judgment or order for the payment of a sum of money against him for any amount, and execution thereof not having been stayed, has served on him in this Colony, or by leave of the Court elsewhere, a bankruptcy notice under this Ordinance requiring him to pay the debt in accordance with the terms of the judgment or order or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not, within seven days after service of the notice in case the service is effected in this Colony, and in case the service is effected elsewhere then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counter-claim, set off, or cross demand which equals or exceeds the amount of the debt, and which he could not set up in the action in which the judgment or order was obtained. Any person who for the time being is entitled to enforce a final judgment or order shall be deemed a creditor who has obtained a final judgment or order; h) If the debtor gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts. 2. A bankruptcy notice under this Ordinance shall be in the prescribed form and shall state the consequences of non-compliance therewith and shall be served in the prescribed manner.

Imp. § 4; 53 & 54 Vic. c. 71, § 1.

#### *Receiving order.*

**Receiving order. 6.** Subject to the conditions hereinafter specified, if a debtor commit an act of bankruptcy, the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Ordinance called a receiving order, for the protection of the estate.

Imp. § 5.

**Conditions on which creditor may petition. Petition by secured creditor. Non-traders. 7. 1.** A creditor shall not be entitled to present a bankruptcy petition against a debtor unless: a) The debt owing by the debtor to the petitioning creditor, or if two or more creditors join in the petition, the aggregate amount of the debts owing to the several petitioning creditors, amounts to fifty pounds, and b) The debt is a liquidated sum, payable either immediately or at some certain future time, and c) The act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition, and d) The debtor is domiciled in the Colony, or within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in the Colony. 2. If the petitioning creditor is a secured creditor, he must in his petition, either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated, in the same manner as if he were an unsecured creditor. 3. A creditor shall not be entitled to present a bankruptcy petition against a person who is not a trader within the meaning of the Bankruptcy Ordinance, No. 51, in respect of a debt contracted before the commencement of this Ordinance.

Imp. § 6.

**Proceedings and order on creditor's petition. 8. 1.** A creditor's petition shall be verified by affidavit of the creditor or of some person on his behalf having knowledge of the facts, and served in the prescribed manner. 2. At the hearing the Court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and if satisfied with the

proof, may make a receiving order in pursuance of the petition. 3. If the Court is not satisfied with the proof of the petitioning creditor's debts, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition. 4. Where the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure, or compound for a debt due in pursuance of any judgment or order, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment or order. 5. Where the debtor appears on the petition and denies that he is indebted to the petitioner or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against him in due course of law and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt. 6. Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause, it thinks just, make a receiving order on the petition of some other creditor, and thereupon shall dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid. 7. A creditor's petition shall not after presentment be withdrawn without the leave of the Court.

Imp. § 7.

**Debtor's petition and order thereon.** 9. 1. A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the Court shall thereupon make a receiving order. 2. A debtor's petition shall not after presentment be withdrawn without the leave of the Court.

Imp. § 8.

**Effect of receiving order.** 10. [As amended by Ord. No. 31 of 1909, § 2.] 1. On the making of a receiving order the receiver hereinafter mentioned shall be thereby constituted receiver of the property of the debtor, and thereafter except as directed by this Ordinance, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy, shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings unless with the leave of the Court and on such terms as the Court may impose. 2. But this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed. 3. a) The Governor may from time to time appoint such person as he shall think fit to be official receiver of debtors' estates, in this Ordinance referred to as the receiver, and may remove any person so appointed from such office. Such receiver shall be an officer of the Supreme Court in its jurisdiction in bankruptcy, and judicial notice shall be taken of any appointment by the Governor of a receiver under this section; b) The Governor may appoint a fit and proper person to discharge the duties of the receiver in case of his death, removal, or absence; c) Such acting receiver shall during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities of the receiver, and all the estates, rights, and powers vested in the receiver shall, during his tenure of office, and without any conveyance or transfer, vest in such acting receiver.

Imp. § 9.

**Discretionary powers as to appointment of interim receiver and stay of proceedings.**

11. 1. The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition and before a receiving order is made, appoint some person to be interim receiver of the property of the debtor or of any part thereof and direct him to take immediate possession thereof or of any part thereof. 2. The Court may at any time after the presentation of a bankruptcy petition, stay any action, execution, or other legal process against the property or person of the debtor, and any Court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

Imp. § 10.



**Making order staying proceedings. 12.** Where the Court makes an order staying any action or proceeding or staying proceedings generally, the order may be served by sending a copy thereof under the seal of the Court by prepaid post letter to, or delivering the same at, the address for service of the plaintiff or other party prosecuting such proceeding.

Imp. § 11.

**Power to appoint special manager. 13.** 1. The receiver or interim receiver of a debtor's estate may, with the consent of the Court on the application of any creditor or creditors, if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally, require the appointment of a special manager of the estate or business other than the receiver or interim receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including the powers of a receiver) as may be entrusted to him by the receiver. 2. The receiver and interim receiver, if a person other than the Registrar, and the special manager shall respectively give such security and account in such manner as the Court may from time to time direct; and shall respectively receive such remuneration as the creditors may, by resolution at an ordinary meeting determine, or in default of such resolution as the Court shall order. 3. Where an interim receiver has been appointed, and the bankruptcy petition has been subsequently dismissed, the creditor or creditors upon whose application the order was made, shall be jointly and severally liable for the remuneration of such receiver, and of the special manager (if any) and for all expenses incurred in pursuance or in consequence of such order, and the Court may upon dismissing the petition order the payment thereof.

Imp. § 12.

**Advertisement of receiving order. 14.** Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, and the date of the petition, shall be gazetted and advertised in a local newspaper in the prescribed manner.

Imp. § 13.

*Proceedings consequent on order.*

**First and other meetings of creditors. First Schedule. 15.** 1. As soon as may be after the making of a receiving order against a debtor, a general meeting of his creditors (in this Ordinance referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be entertained, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property. 2. With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the first Schedule shall be observed.

Imp. § 15.

**Debtor's statement of affairs. 16.** 1. Where a receiving order is made against a debtor, he shall make out and submit to the receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences, and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the receiver may require. 2. The statement shall be so submitted within the following times namely: a) If the order is made on the petition of the debtor, within three days from the date of the order; b) If the order is made on the petition of a creditor, within seven days from the date of the order. But the Court may in either case for special reasons extend the time. 3. If the debtor fails without reasonable excuse to comply with the requirements of this section, the Court may on the application of the receiver or of any creditor adjudge the debtor bankrupt. 4. Any person stating himself in writing to be a creditor of the bankrupt, may, personally or by agent, inspect this statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the trustee or receiver.

Imp. § 16.

*Public examination of debtor.*

**Public examination of debtor. 17.** 1. Where the Court makes a receiving order, it shall hold a public sitting on a day to be appointed by the Court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as

to his conduct, dealings, and property. 2. The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs. 3. The Court may adjourn the examination from time to time. 4. Any creditor who has tendered a proof, or his representative authorized in writing, may question the debtor concerning his affairs and the causes of his failure. 5. The receiver shall take part in the examination of the debtor, and for the purpose thereof if authorized by the Court may employ a solicitor with or without counsel. 6. If a trustee is appointed before the conclusion of the examination he may take part therein. 7. The Court may put such questions to the debtor as it may think expedient. 8. The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor at all reasonable times. 9. When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors. Provided that the Court may, if it think fit, direct a further examination of the debtor. 10. Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, the Court may make an order dispensing with such examination, or directing that the debtor be examined on such terms, in such manner, and at such place as to the Court seems expedient.

Imp. § 7 ; 53 & 54 Vic. c. 71, § 2.

*Composition or scheme of arrangement.*

**Composition, etc.** 18. 1. Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall within four days of submitting his statement of affairs, or within such time thereafter as the receiver may fix, lodge with the receiver a proposal in writing signed by him, embodying the terms of the composition or scheme of arrangement which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed. 2. In such case the receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor before the meeting a copy of the debtor's proposal with a report thereon; and if at that meeting or the adjournment thereof as hereinafter provided, a majority in number and three-fourths in value of all the creditors who have proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors, and when approved by the Court shall be binding on all the creditors. 3. The debtor may at the meeting or the adjournment thereof amend the terms of his proposal if the amendment is in the opinion of the receiver calculated to benefit the general body of creditors. 4. Any creditor who has proved his debt may assent to or dissent from the proposal by a letter in the prescribed form, addressed to the receiver so as to be received by him not later than the day preceding the meeting or adjourned meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted. 5. The debtor or receiver may, after the proposal is accepted by the creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved. 6. The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the Court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal. 7. The Court shall, before approving the proposal, hear a report of the receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor. 8. If the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required, where the debtor is adjudged bankrupt, to refuse his discharge, the Court shall refuse to approve the proposal. 9. If any facts are proved on proof of which the Court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged bankrupt, the Court shall refuse to approve the proposal, unless it provides reasonable security for payment of not less than seven shillings and sixpence in the pound on all unsecured debts



provable against the debtor's estate. 10. In any other case the Court may either approve or refuse to approve the proposal. 11. If the Court approves the proposal, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the Court. 12. A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, except to such extent and under such conditions as the Court expressly orders in respect of such liability. 13. A certificate of the receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity. 14. The provisions of a composition or scheme under this section may be enforced by the Court on the application of any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court. 15. If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or the debtor, or that the approval of the Court was obtained by fraud, the Court may if it thinks fit, on application by the receiver or the trustee or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. When a debtor is adjudged a bankrupt under this subsection, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy. 16. If, under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section 27 and Part V of this Ordinance shall apply as if the trustee were a trustee in bankruptcy and as if the terms "bankruptcy," "bankrupt," and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and order approving the composition or scheme. 17. Part III of this Ordinance shall so far as the nature of the case and the terms of composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee," "bankruptcy," "bankrupt" and "order of adjudication" as in the last preceding sub section. 18. No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt. 19. The acceptance by a creditor of a composition or scheme shall not release any person who under this Ordinance would not be released by an order of discharge if the debtor had been adjudged a bankrupt.

Imp. § 18; 53 & 54 Vic. c. 71, § 3.

**Effect of composition or scheme.** 19. Notwithstanding the acceptance and approval of a composition or scheme, such composition or scheme will not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Ordinance, the debtor would not be discharged by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Imp. § 19.

*Adjudication of bankruptcy and appointment of trustee.*

**Adjudication where composition not accepted or approved.** 20. 1. Where a receiving order is made against a debtor, then if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not accepted or approved in pursuance of this Ordinance within fourteen days after the conclusion of the examination of the debtor or such further time as the Court may allow, the Court shall unless good reason be shewn, adjudge the debtor bankrupt. 2. When a debtor is adjudged bankrupt his property shall become divisible among his creditors and shall vest in a trustee. 3. Notice of every order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, and the date of the adjudication, shall be gazetted and advertised in a local newspaper in the prescribed manner, and the date of the order shall for the purposes of this Ordinance be the date of the adjudication.

Imp. § 20.

**Appointment of trustee.** 21. 1. Where a debtor is adjudged bankrupt or the creditors have resolved that he be adjudged bankrupt, the creditors may by ordinary resolution appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned. 2. The person so appointed shall give security in such manner and to such amount as the creditors by resolution shall determine. The appointment of the trustee shall be reported to the Court, and the Court if satisfied with the security shall certify that his appointment has been duly made, unless the appointment is objected to on the ground that the person appointed is not fit to act as trustee, or that he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty, or that his connection with or relation to the bankrupt or his estate or any particular creditor makes his appointment undesirable in the interests of the creditors generally, or, with the written consent of creditors representing one-fourth in value or in number of the creditors, on the ground that the appointment has not been made in good faith. 3. Notice of any such objection shall be given to the Registrar, the receiver, and the person whose appointment is objected to, together with a statement of the nature of such objection, and the Court shall decide on its validity. 4. A certificate of the Court shall be conclusive evidence that the person therein named is duly appointed trustee, and such appointment shall take effect as from the date of the certificate. 5. The Registrar shall not, save as by this Ordinance provided, be trustee of the bankrupt's property. 6. If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or in the event of negotiations for a composition or scheme being pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the Court to approve the composition or scheme, the receiver shall report the matter to the Court, and thereupon the Court shall appoint some fit person to be trustee of the bankrupt's property. 7. Provided that the creditors or the committee of inspection (if so authorized by resolution of the creditors), may at any subsequent time if they think fit appoint a trustee, and, on the appointment being made and approved by the Court, the person appointed shall become trustee in the place of the person appointed by the Court. 8. When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee.

Imp. § 21; 53 & 54 Vic. c. 71, § 4.

**Committee of inspection.** 22. 1. The creditors, qualified to vote, may at their first or any subsequent meeting, by resolution, appoint from among the creditors, or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee. The committee of inspection shall consist of not more than five nor less than three persons. Provided that a creditor who is appointed a member of a committee of inspection shall not be qualified to act until he has proved his debt and the proof has been admitted. 2. The committee of inspection shall meet at such times as they shall from time to time appoint, and failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary. 3. The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting. 4. Any member of the committee may resign his office by notice in writing signed by him and delivered to the trustee. 5. If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant. 6. Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting. 7. On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may, by resolution appoint another creditor or other person eligible as above to fill the vacancy. 8. The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body, and where the number of members of the committee is for the time being less than five, the creditors may increase that



number so that it do not exceed five. 9. If there be no committee of inspection, any act or thing or any direction or permission by this Ordinance authorized or required to be done or given by the committee may be done or given by the Court on the application of the trustee.

Imp. § 22; 53 & 54 Vic. c. 71, § 5.

**Power to accept composition or scheme after adjudication. 23.** 1. Where a debtor is adjudged bankrupt, the creditors may, if they think fit, at any time after the adjudication, by a resolution of the majority in number and three-fourths in value of all the creditors who have proved, resolve to entertain a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication. 2. If the Court approves the composition or scheme, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him, or in such other person as the Court may appoint, on such terms, and subject to such conditions, if any, as the Court may declare. 3. If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may if it thinks fit on application by any person interested adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy.

Imp. § 23; 53 & 54 Vic. c. 71, § 6.

*Control over person and property of debtor.*

**Duties of the debtor as to discovery and realization of property. 24.** 1. Every debtor against whom a receiving order is made, shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require. 2. He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such meetings of his creditors, wait at such times on the receiver, special manager, or trustee, execute such powers or attorney, conveyances, deeds and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the receiver, special manager, or trustee, or may be prescribed by rules of Court, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the receiver, special manager, trustee, or any creditor or person interested. 3. He shall, if adjudged a bankrupt, aid to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors. 4. If the debtor wilfully fail to perform the duties imposed on him by this section, or to deliver up possession of any part of his property which is divisible amongst his creditors under this Ordinance, and which is for the time being in his possession or under his control, to the receiver or to the trustee, or to any person authorized by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly.

Imp. § 24.

**Arrest of debtor under certain circumstances. 25.** 1. The Court may by warrant addressed to any constable or prescribed officer of the Court, cause a debtor to be arrested, and any books, papers, money, and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Court may order, under the following circumstances: a) If, after a bankruptcy notice has been issued under this Ordinance, or after the presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service

of a bankruptcy petition, or of avoiding appearance to such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy against him; b) If, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents, or writings which might be of use to his creditors, in the course of his bankruptcy; c) If, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of five pounds, without leave of the receiver or trustee; d) If, without good cause shown, he fails to attend any examination ordered by the Court. Provided that no arrest upon a bankruptcy notice shall be valid and protected, unless the debtor, before or at the time of his arrest, shall be served with such bankruptcy notice. 2. No payment or composition made or security given after arrest made under this section, shall be exempt from the provisions of this Ordinance relating to fraudulent preferences.

Imp. § 25; 53 & 54 Vic. c. 71, § 7.

**Re-direction of debtor's letters.** 26. Where a receiving order is made against a debtor, the Court, on the application of the receiver or trustee, may from time to time order that for such time, not exceeding three months, as the Court thinks fit, post letters addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed, sent, or delivered by the Postmaster-General, or the officers acting under him, to the receiver or the trustee or otherwise as the Court directs, and the same shall be done accordingly.

Imp. § 26.

**Discovery of debtor's property.** 27. 1. The Court may, on the application of the receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor or his dealings or property, and the Court may require any such person to produce any documents in his custody or power, relating to the debtor, his dealings or property. 2. If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may by warrant cause him to be apprehended and brought up for examination. 3. The Court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings or property. 4. If any person on examination before the Court admits that he is indebted to the debtor, the Court may, on the application of the receiver or trustee, order him to pay to the receiver or trustee, at such time and in such manner as to the Court seems expedient, the amount admitted or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination. 5. If any person on examination before the Court admits that he has in his possession any property belonging to the debtor, the Court may, on the application of the receiver or trustee, order him to deliver to the receiver or trustee such property, or any part thereof, at such time, and in such manner, and on such terms as to the Court may seem just. 6. The Court may, if it thinks fit, order that any person who, if in the Colony, would be liable to be brought before it under this section, shall be examined in any place out of the Colony. 7. A witness or any person interested in the proceedings, may on payment of the prescribed fee, obtain a copy of any depositions taken in pursuance of this section.

Imp. § 27.

#### *Discharge of bankrupt.*

**Discharge of bankrupt.** 28. 1. A bankrupt may, at any time after being adjudged a bankrupt, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall be heard in open Court. 2. On the hearing of the application the Court shall take into consideration a report of the receiver as to the bankrupt's conduct and affairs (including



a report as to the bankrupt's conduct during the proceedings under his bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property: Provided that the Court shall refuse the discharge in all cases where the bankrupt has been convicted of any misdemeanour under this Ordinance, or any other misdemeanour connected with his bankruptcy, or any felony connected with his bankruptcy, unless for special reasons the Court otherwise determines, and shall on proof of any of the facts hereinafter mentioned, either: i) Refuse the discharge; or ii) Suspend the discharge for a period of not less than two years; or iii) Suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors; or iv) Require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct; but execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available toward payment of his debts. Provided that if at any time after the expiration of two years from the date of an order made under this section, the bankrupt shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit. 3. The facts hereinbefore referred to are: a) That the bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the Court that this has arisen from circumstances for which he cannot be justly held responsible; b) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within three years immediately preceding his bankruptcy; c) That the bankrupt has continued to trade after knowing or having reason to believe himself to be insolvent; d) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it; e) That the bankrupt has failed satisfactorily to account for any loss of assets or for any deficiency of assets to meet his liabilities; f) That the bankrupt has brought on or contributed to his bankruptcy by recklessness or by rash and hazardous speculation or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs; g) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous and vexatious defence to any action properly brought against him; h) That the bankrupt has within three months preceding the date of the receiving order incurred unjustifiable expense by bringing a frivolous or vexatious action; i) That the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they became due, given an undue preference to any of his creditors; j) That the bankrupt has within three months preceding the date of the receiving order, incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities; k) That the bankrupt has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors; l) That the bankrupt has been guilty of any fraud or fraudulent breach of trust. 4. For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, when the Court is satisfied that the property of the bankrupt has realized, or is likely to realize, or with due care in the realization might have realized, an amount equal to ten shillings in the pound on his unsecured liabilities, and a report by the receiver or the trustee shall be prima facie evidence of the amount of such liabilities. 5. For the purposes of this section the report of the receiver shall be prima facie evidence of the statements therein contained. 6. Notice of the appointment by the Court of the day for hearing the application for discharge, shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the Court

may hear the receiver and the trustee and may hear also any creditor. At the hearing the Court may put or allow to be put to the debtor such questions and receive such evidence as it may think fit. 7. The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently. 8. A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realization and distribution of such of his property as is vested in the trustee, and if he fails to do he shall be guilty of a contempt of court: and the Court may also if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done subsequent to the discharge, but before its revocation.

Imp. § 29, 53 & 54 Vic. c. 71, § 8.

**Fraudulent settlements.** 29. In either of the following cases that is to say: 1. In the case of a settlement, made before and in consideration of marriage, where the settlor is not at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement; or 2) In the case of any covenant or contract, made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property, wherein he had not, at the date of his marriage, any estate or interest (not being money or property of or in right of his wife), if the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

Imp. § 19.

**Effect of order of discharge.** 30. 1. An order of discharge shall not release the bankrupt from any debt on a recognizance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of any public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence: and he shall not be discharged from such excepted debts unless the Governor certifies in writing his consent to his being discharged therefrom. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party. 2. An order of discharge shall release the bankrupt from all other debts provable in bankruptcy. 3. An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein; and in any proceeding that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Ordinance and the special matter in evidence. 4. An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt, or was jointly bound, or had made any joint contract with him or any person who was surety or in the nature of a surety for him. 5. An order of discharge shall not release the bankrupt from any liability under a judgment against him in an action for seduction, or under an affiliation order, except to such extent and under such conditions as the Court expressly orders in respect of such liability.

Imp. § 30.

## *Part II. Disqualifications of Bankrupt.*

**Disqualifications of bankrupt.** 31. 1. When a debtor is adjudged a bankrupt he shall, subject to the provisions of this Ordinance, be disqualified for: a) Being nominated to, or sitting or voting in the executive or legislative council, or on any committee thereof; b) Being appointed or acting as a justice of the peace; c) Being nominated or elected to or holding or exercising the office of mayor, or councillor, or town commissioner, or town assessor, or member of the board of education, or member of the college council, or member of any sanitary authority, or member of the water authority or sewerage board, or member of the central road board, or of a local road board, or of any office, board, or public body which may hereafter be established



in lieu of any of the said offices, boards, or public bodies. 2. The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when: a) The adjudication of bankruptcy against him is annulled; or b) He obtains from the Court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part. The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal. 3. No disqualification arising under this section shall exceed a period of five years from the date of any discharge which may hereafter be granted under and by virtue of this Ordinance.

Imp. § 32; 53 & 54 Vic. c. 71, § 9.

**Vacating of office.** 32. If a person is adjudged bankrupt whilst holding any of the offices enumerated in the last preceding section his office shall thereupon become vacant.

Imp. § 34.

**Annulling adjudication and the effect thereof.** 33. 1. Where in the opinion of the Court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may, at any time on the application of any person interested, by order annul the adjudication. 2. Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the receiver, trustee, or other person acting under their authority, or by the Court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or in default of any such appointment shall revert to the debtor for all his estate or interest therein on such terms and subject to any such conditions, if any, as the Court may declare by order. 3. Notice of the order annulling an adjudication shall be forthwith gazetted and published in a local newspaper.

Imp. § 35.

**Meaning of payment of debt in full.** 34. For the purposes of this part of this Ordinance, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

Imp. § 36.

### *Part III. Administration of Property.*

#### *Proof of debts.*

**Description of debts provable in bankruptcy.** 35. 1. Demands in the nature of unliquidated damages, arising otherwise than by reason of a contract, promise, or breach of trust, shall not be provable in bankruptcy. 2. A person, having notice of any act of bankruptcy available against the debtor, shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice. 3. Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy. 4. An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value. 5. Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court. 6. If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Ordinance, be deemed to be a debt not provable in bankruptcy. 7. If, in the opinion of the Court the value of the debt or liability is capable of being fairly estimated, the Court may assess or direct the value to be assessed in such manner as it shall think fit, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy. 8. "Liability" shall, for the purposes of this Ordinance, include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking,

whether such breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of money, or money's worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or assessable only by fixed rules or as a matter of opinion.

**Imp. § 37.**

**Debts founded in felony. 36.** Proof of a debt if otherwise provable, shall not be rejected because it is founded in felony, unless it is shewn that the creditor seeking to prove has omitted to perform some duty in connection with the prosecution of the felon.

**Mutual credit and set-off. 37.** Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor, against whom a receiving order shall be made under this Ordinance, and any other person proving or claiming to prove a debt under such receiving order, an account shall be taken of what is due from one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor, notice of an act of bankruptcy committed by such debtor, and available against him for adjudication.

**Imp. § 38.**

**Rules as to proof of debts. 38.** With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the second Schedule, the rules in that Schedule shall be observed.

**Imp. § 39.**

**Priority of debts. 39. 1.** In the distribution of the property of a bankrupt and in the distribution of the assets of any company being wound up under the Companies Ordinance, No. 69, and any Ordinance amending the same, there shall be paid in priority to all other debts: a) All local rates due from the bankrupt or the company at the date of the receiving order, or as the case may be, the commencement of the winding up, and all assessed taxes, land tax, house tax, and all other taxes and sums whatsoever assessed on the bankrupt or the company; b) All wages or salary of any clerk or servant in respect of any services rendered to the bankrupt or the company within four months next before the date of the receiving order, or, as the case may be, the commencement of the winding-up, not exceeding fifty pounds; and c) All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or piece work, and whether the hiring was by the day or week or otherwise, due in respect of any services rendered to the bankrupt or company within two months next before the date of the receiving order, or, as the case may be, the commencement of the winding-up: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order, or, as the case may be, the commencement of the winding-up; d) In the winding-up of any company under the Companies Ordinance, No. 69, and any Ordinance amending the same, the foregoing debts shall so far as the assets of the company, available for payment of general creditors, may be insufficient to meet them, have priority over the claims of holders of debentures or debenture stock under any floating charge created by such company, and shall be paid accordingly out of any property comprised in or subject to such charge; e) In case a receiver is appointed on behalf of the holders of any debentures or debenture stock of a company secured by a floating charge, or in case possession is taken by or on behalf of such debenture holders of any property comprised in or subject to such charge, then and in either of such cases, if the company is not at the time in course of being wound up, the foregoing debts shall be paid forthwith out of any assets coming into the hands of the receiver, or other person taking possession as aforesaid, in priority to any claim for principal



or interest in respect of such debentures or debenture stock. And the periods of time hereinbefore mentioned shall be reckoned from the date of the appointment of the receiver or possession being taken as aforesaid, as the case may be. But any payments made in pursuance hereof shall be recouped as far as may be out of the assets of the company available for the payment of general creditors. 2. The foregoing debts shall rank equally between themselves, and shall be paid in full, but in case the property of the bankrupt is, or the assets of the company are, insufficient to meet them, they shall abate in equal proportions between themselves, save and except the debts payable under subsection 1 (a) of this section, which shall in all cases be paid in full. 3. Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith, so far as the property of the debtor, or the assets of the company, as the case may be, is or are sufficient to meet them. 4. In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt or a company being wound up within three months next before the date of the receiving order or the winding-up order respectively, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof; provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made. 5. In the case of partners, the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate. 6. Subject to the provisions of this Ordinance, all debts proved in bankruptcy shall be paid *pari passu*. Provided that where a debt is in respect of money advanced by way of loan to a person engaged or about to engage in any business, on a contract that the lender shall receive a rate on interest varying with the profits arising from carrying on the business; or is in respect of a share of the profits as consideration for the sale of the goodwill of a business; the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of the profits contracted for, until the claims of the other creditors for valuable consideration in money or money's worth have been satisfied. Provided also that a creditor shall not be entitled to recover anything in respect of a debt due on a voluntary bond or covenant until the claims of the other creditors for valuable consideration in money or money's worth have been satisfied. 7. If there is any surplus after payment of all debts which shall have been proved, it shall be applied in payment of interest from the date of the receiving order or commencement of the winding-up as the case may be, at the rate of four pounds per centum per annum, on all debts proved in bankruptcy. 8. This section shall apply in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order. 3. Nothing in this Ordinance shall prejudice the provisions of the Friendly Societies Ordinance, No. 110, or shall affect the priority given to the payment of funeral and testamentary expenses.

Imp. § 40.

**Preferential claim in case of apprenticeship. 40.** 1. When at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case. 2. Where it appears expedient to a trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions

of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

Imp. § 41.

**Power for landlord to distrain for rent. 41.** 1. The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation; that if such distress for rent be levied after the commencement of the bankruptcy, it shall be available only for six months rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the overplus due for which the distress may not have been available. 2. For the purposes of this section the term "order of adjudication" shall be deemed to include an order for the administration of the estate of a debtor whose debts do not exceed fifty pounds, or of a deceased person who dies insolvent.

Imp. § 42.

*Property available for payment of debts.*

**Relation back of trustee's title. 42.** The bankruptcy of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order, or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

Imp. § 43.

**Description of bankrupt's property divisible amongst creditors. 43.** The property of the bankrupt divisible amongst his creditors, and in this Ordinance referred to as the property of the bankrupt, shall not comprise the following particulars: 1. Property held by the bankrupt on trust for any other person. 2. The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole. But it shall comprise the following particulars: a) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge, and b) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and c) All goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action, other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section.

Imp. § 44.

*Effect of bankruptcy on antecedent transactions.*

**Restriction of creditor's rights under execution or attachment. 44.** 1. Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor. 2. For the purposes of this Ordinance, an execution against goods is completed by seizure and sale; an attachment of the debt is completed by the receipt of the debt; and an execution against land is completed from the date of the order for sale, or in the case of an equitable interest, by the appointment of a receiver.

Imp. § 45.

**Duties of marshal as to goods taken in execution. 45.** 1. Where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of



the execution by the receipt or recovery of the full amount of the levy, notice is served on the marshal that a receiving order has been made against the debtor, the marshal shall, on request, deliver the goods and money seized or received in part satisfaction of the execution to the receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge. 2. Where under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the marshal shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor thereon, or on any other petition of which the marshal has notice, the marshal shall pay the balance to the receiver, or, as the case may be, to the trustee, who shall be entitled to retain the same as against the execution creditor. 3. An execution, levied by seizure and sale on the goods of a debtor, is not invalid, by reason only of its being an act of bankruptcy, and a person who purchases the goods, in good faith under a sale by the marshal shall in all cases acquire a good title to them against the trustee in bankruptcy.

Imp. § 46; 53 & 54 Vic. c. 71, § 11.

**Avoidance of voluntary settlements. 46.** Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of such settlement, be voidable against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be voidable against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in such settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof. 2. Any covenant or contract made in consideration of marriage, for the future settlement, on or for the settlor's wife or children, of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be voidable against the trustee in the bankruptcy. 3. "Settlement" shall for the purposes of this section include any conveyance or transfer of property.

Imp. § 47.

**Avoidance of fraudulent preferences. 47.** Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys, in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt on a petition presented within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in bankruptcy. 2. This section shall not affect the right of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Imp. § 48.

**Protection of bona fide transactions without notice. 48.** Subject to the foregoing provisions of this Ordinance with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in this Ordinance shall invalidate in the case of a bankruptcy: a) Any payment by the bankrupt to any of his creditors; b) Any payment or delivery to the bankrupt; c) Any conveyance, charge, or assignment by the bankrupt for valuable consideration; or d) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration. Provided that both the following conditions are complied with; namely: 1. The payment, delivery, conveyance, charge, assignment, contract, dealing, or transaction, as the case may be, takes place before the

date of the receiving order; and 2. The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, charge, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, charge, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

Imp. § 49.

*Realization of property.*

**Possession of property by trustee.** 49. 1. The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery. 2. The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the Court, and the Court may, on his application, enforce such acquisition or retention accordingly. 3. Where any part of the property of the bankrupt consists of stock, shares in ships, shares or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt. 4. Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee. 5. Any treasurer or other officer, or any banker, attorney, or agent of a bankrupt shall pay and deliver to the trustee all money and securities in his possession or power as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of court, and may be punished accordingly on the application of the trustee. 6. Notwithstanding anything contained in the Savings Banks Ordinance, No. 146, the chief manager shall on application of the trustee or receiver disclose what deposits of money, if any, of the debtor are remaining to his credit in the Savings Bank, and shall pay the same to the receiver or trustee.

Imp. § 50.

**Seizure of property of bankrupt.** 50. Any person, acting under warrant of the Court, may seize any property of the bankrupt in the custody or possession of the bankrupt, or of any other person, and with a view to such seizure may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any constable or officer of the Court, who may execute it according to its tenor.

Imp. § 51.

**Appropriation of portion of salary to creditors.** 51. 1. When a bankrupt is an officer or clerk, or otherwise employed or engaged in the Civil Service of the Colony, the trustee shall receive for distribution among the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the Governor, may direct. Before making any order under this subsection, the Court shall communicate with the Governor as to the amount, time, and manner of payment to the trustee, and shall obtain the written consent of the Governor to the terms of such payment. 2. Where a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay or pension, or to any compensation granted by the Government, the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension, or compensation, or part thereof, to the trustee, to be applied by him in such manner as the Court may direct. 3. Nothing in this section shall take away or abridge any power of the Governor to dismiss a bankrupt, or to declare the pension, half-pay, or compensation of any bankrupt to be forfeited.

Imp. § 53.

**Vesting and transfer of property.** 52. 1. Until a trustee is appointed, the receiver shall be the trustee for the purposes of this Ordinance, and immediately on a debtor being adjudged a bankrupt, the property of the bankrupt shall vest in the trustee. 2. On the appointment of a trustee, the property shall forthwith pass to and vest in the trustee appointed. 3. The property of the bankrupt shall pass from trustee to trustee, including under that term the Registrar when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office,



without any conveyance, assignment, or transfer whatever. 4. The certificate of appointment of a trustee shall take effect as a conveyance or assignment of the property of the bankrupt and where any part of the property of a bankrupt consists of land, or any interest in land, the trustee may register a duplicate copy of the certificate of appointment, certified by the Registrar, and in the case of land registered under the Real Property Ordinance, cause a note thereof to be endorsed on the Crown grant or certificate of title and the duplicate thereof.

Imp. § 54.

**Disclaimer of onerous property. 53.** 1. Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stocks in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell, or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within twelve months after the first appointment of a trustee, disclaim the property. Provided that where any such property shall not have come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within twelve months after he first became aware thereof. Any such period of twelve months may be extended by the Court. 2. The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property, in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed, as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person. 3. A trustee shall not be entitled to disclaim a lease without the leave of the Court, except in any cases which may be prescribed by the rules, and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, and other matters arising out of the tenancy as the Court thinks just. 4. The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property, requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it. 5. The Court may on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract, on such terms as to payment, by or to either party, of damages for the non-performance of the contract, or otherwise as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy. 6. The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability, not discharged by this Ordinance, in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in, or delivery thereof to, any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose. Provided always that when the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, but if the Court shall think fit, free from any liability for any non-performance or breach of a covenant committed before the property was vested in him, and if the case so requires, as if the lease had

comprised only the property comprised in the vesting order. Any mortgagee or under-lessee, declining to accept a vesting order upon such terms, shall be excluded from all interest in and security upon the property, and if there shall be no person claiming under the bankrupt, who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt. 7. Any person injured by the operation of a disclaimer under this section, shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

Imp. § 55; 53 & 54 Vic. c. 71, §13.

**Powers of trustee. 54.** Subject to the provisions of this Ordinance, the trustee may do all or any of the following things: 1. Sell all or any part of the property of the bankrupt (including the good-will of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels. 2. Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof. 3. Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt. 4. Exercise any powers the capacity to exercise which is vested in the trustee under this Ordinance, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Ordinance. 5. Deal with any property, to which the bankrupt is beneficially entitled as tenant in tail, in the same manner as the bankrupt might have dealt with it.

Imp. § 56.

**Powers exerciseable by trustee with permission of committee of inspection. 55.** The trustee may with the permission of the committee of inspection, do all or any of the following things: 1. Carry on the business of the bankrupt so far as may be necessary for the beneficial winding-up of the same. 2. Bring, institute, or defend any action, suit, or other legal proceeding relating to the property of the bankrupt. 3. Employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection. 4. Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee may think fit. 5. Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts. 6. Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on. 7. Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy. 8. Make such compromise or other arrangement as may be thought expedient with respect to any claim, arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person. 9. Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold. The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

Imp. § 57.

#### *Distribution of property.*

**Declaration and distribution of dividends. 56.** 1. Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts. 2. The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date. 3. Subsequent dividends



shall in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months. 4. Before declaring a dividend the trustee shall cause notice of his intention to do so to be gazetted and published in a local newspaper, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt. 5. When the trustee has declared a dividend, he shall send to each creditor who has proved, a notice showing the amount of the dividend, and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

Imp. § 58.

**Joint and separate dividends. 57.** 1. Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt, until all the separate creditors have received the full amount of their respective debts. 2. Where joint and separate properties are being administered, dividends of the joint and separate property shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Imp. § 59.

**Provision for distant creditors, disputed claims, etc. 58.** In the calculation and distribution of a dividend, the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting, that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined. He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand.

Imp. § 60.

**Right of creditor who has not proved before declaration of dividend. 59.** Any creditor, who has not proved his debt before the declaration of any dividend or dividends, shall be entitled to be paid, out of any money for the time being in the hands of the trustee, any dividend or dividends he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved, by reason that he has not participated therein.

Imp. § 61.

**Final dividend. 60.** When the trustee has realized all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and the committee of inspection be realized without needlessly protracting the trusteeship, he shall declare a final dividend, but before doing so he shall give notice, in the prescribed manner, to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. After the expiration of the time so limited, or, if the Court on application by any such claimant grant him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

Imp. § 62.

**No action for dividend. 61.** No action for dividend shall lie against a trustee, but if the trustee refuses to pay any dividend, the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Imp. § 63.

**Power to allow bankrupt to manage property. 62.** 1. The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt, or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such

terms as the trustee may direct. 2. The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding-up his estate, but any such allowance may be increased or reduced by the Court.

Imp. § 63.

**Bankrupt's right to surplus.** 63. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest as by this Ordinance provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

Imp. § 65.

#### *Part IV. Receiver in Bankruptcy.*

**Status of receiver. Power to administer oaths.** 64. 1. The duties of the receiver shall have relation both to the conduct of the debtor and to the administration of his estate. 2. The receiver may, for the purpose of affidavits, verifying proofs, petitions, or other proceedings under this Ordinance, administer oaths. 3. All expressions referring to the trustee under a bankruptcy shall, unless the context otherwise requires, or this Ordinance otherwise provides, include the receiver when acting as trustee.

Imp. § 68.

**Duties of receiver as to the debtor's conduct.** 65. As regards the debtor, it shall be the duty of the receiver: 1. To investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes a felony or misdemeanour under this Ordinance, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge. 2. To make such other reports concerning the conduct of the debtor as the Court may direct. 3. To take such part as may be directed by the Court in the public examination of the debtor. 4. To take such part, and give such assistance, in relation to the prosecution of any fraudulent debtor as the Court may direct or as may be required by the Attorney-General.

Imp. § 69.

**Duties of receiver as to debtor's estate.** 66. 1. As regards the estate of the debtor, it shall be the duty of the receiver: a) Pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and where a special manager is not appointed, as manager thereof; b) To authorize the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do; c) To summon and preside at the first meeting of creditors; d) To issue forms of proxy for use at the meeting of creditors; e) To report to creditors as to any proposal the debtor may have made with respect to the mode of liquidating his affairs; f) To advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise; g) To act as trustee during any vacancy in the office of trustee. 2. For the purpose of his duties as an interim receiver or manager, the receiver shall have the same powers as if he were a receiver and manager appointed by the Supreme Court of Judicature in its general jurisdiction, but he shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and he shall not, unless the Court otherwise order, incur any expense beyond what is requisite for the protection of the debtor's property or the disposing of perishable goods. Provided that when the debtor cannot himself prepare a proper statement of affairs, the receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs. 3. The receiver shall account to the Court and pay over all moneys and deal with all securities in such manner as the Court may from time to time direct.

Imp. § 70.

#### *Part V. Trustees in Bankruptcy.*

##### *Remuneration of trustee.*

**Remuneration of trustee.** 67. When the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or if the creditors so resolve by the committee of inspection.



2. If one-fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the Court that the remuneration, having regard to the amount realized by the trustee, after deducting any sums paid to secured creditors out of the proceeds of their securities, and to the amount distributed in dividend, is unnecessarily large, the Court shall fix the amount of the remuneration. 3. The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover. 4. Where no remuneration has been voted to the trustee, he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as may be allowed on taxation. 5. A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person, who may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever, beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee, to the bankrupt, or any solicitor or other person who may be employed about a bankruptcy.

Imp. § 72; 53 & 54 Vic. c. 71, § 15.

#### *Costs.*

**Allowance and taxation of costs.** 68. 1. Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person, of the ordinary duties which are required by statute or rules to be performed by himself. 2. Where the trustee is a solicitor he may contract that the remuneration for his services as trustee shall include all professional services. 3. All bills and charges of solicitors, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed, and no payment in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. Satisfactory proof shall be given before passing such bills and charges, that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction. 4. Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), cause his bills of costs or charges to be taxed by the prescribed officer, and if he fails to do so within ten days after receipt of the request, or such further time as the Court on application may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

Imp. § 73.

#### *Receipts, payments, accounts, audit.*

**Payment of money into bank.** 69. 1. The trustee shall open an account with such bank as the creditors shall direct at their first meeting in his official name (as follows: "A.B. trustee of the property of C.D. a bankrupt,") and all moneys received by him under the bankruptcy shall be paid to that account. 2. Any interest recoverable in respect of the account shall be part of the assets of the estate. 3. If a trustee at any time retains for more than ten days a sum exceeding twenty-five pounds, or such other amount as the Court in any particular case authorizes him to retain, unless he explains the retention to the satisfaction of the Court, he shall pay interest, on the amount so retained in excess, at the rate of twenty pounds per centum per annum, and shall have no claim for remuneration unless the Court otherwise directs, and may be removed from his office by the Court, and shall be liable to pay any expense occasioned by reason of the default.

Imp. § 74.

**Trustee not to pay into private account.** 70. No trustee in bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee to his private account.

Imp. § 75.

**Audit of trustee's accounts.** 71. 1. Every trustee shall at such times as may be prescribed, but not less than twice in each year during his term of office, send to

the Registrar, or as the Court shall direct, an account of his receipts and payments as such trustee. 2. The account shall be in the prescribed form, and shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form. 3. The Court shall cause the accounts so sent to be audited, and for the purposes of the audit the trustee shall furnish and produce all such books, accounts, vouchers, documents and information as may be required. 4. One copy of the account so audited and of any report thereon shall be filed with the Court, and the other shall be kept by the trustee or such other person as the Court may direct, and each copy shall be open to the inspection of any creditor or of the bankrupt or of any person interested.

Imp. § 78.

**Trustee to furnish list of creditors. 72.** 1. The trustee shall, whenever required by any creditor so to do, and on payment of the prescribed fee, furnish and transmit to such creditor, personally or by post, a list of the creditors, showing in such list the amount of the debt due to each of such creditors. 2. Any creditor may, with the concurrence of one-sixth of the creditors (including himself), at any time call upon the trustee to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall upon receipt of such notice, furnish and transmit such statement of the accounts. Provided that the person at whose instance the accounts are furnished shall deposit with the trustee a sum sufficient to pay the cost of furnishing and transmitting the accounts, such sum to be repaid to him out of the estate if the creditors or the Court so direct.

Imp. § 79; 53 & 54 Vic. c. 71, § 16.

**Books to be kept by trustee. 73.** The trustee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and the bankrupt or any creditor of the bankrupt may, subject to the control of the Court, personally or by his agent inspect any such books.

Imp. § 80.

**Calling the trustee to account. 74.** The Court may on the application of any person interested, call the trustee to account for any misfeasance, neglect, or omission which may appear on his statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankruptcy may have sustained by the misfeasance, neglect, or omission.

Imp. § 81.

#### *Release of trustee.*

**Release of trustee. 75.** 1. When the trustee has realized all the property of the bankrupt, or so much thereof as can, in his opinion, be realized without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition **having been approved**, or **has resigned**, or has been removed from his office, the Court shall on his application, cause a report of<sup>1)</sup> his accounts to be prepared, and on his complying with all the requirements of the Court, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly. 2. Where the release of a trustee is withheld, the Court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty. 3. An order of the Court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact. 4. Where a trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the receiver shall be trustee.

Imp. § 82.

#### *Official name.*

**Official name of trustee. 76.** The trustee may sue and be sued by the official name of "trustee of the property of C.D., a bankrupt", inserting the name of the bankrupt, and by that name may hold property of every description and make

<sup>1)</sup> *Sic*; obviously "on."



contracts, sue and be sued, enter into any arrangements binding himself and his successors in office, and do all acts necessary or expedient to be done in the execution of his office.

Imp. § 83.

*Appointment and removal.*

**Power to appoint joint or successive trustees. 77.** 1. The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorized to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Ordinance included under the term "trustee" and shall be joint-tenants of the property of the bankrupt. 2. The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or not being approved of by the Court.

Imp. § 84.

**Office of trustee vacated by insolvency. 78.** If a receiving order is made against a trustee he shall thereby vacate his office of trustee.

Imp. § 85.

**Removal of trustee. 79.** 1. The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may at the same or any subsequent meeting appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee. 2. If a trustee is guilty of misconduct, or fails to perform his duties under this Ordinance or has become insolvent, or is by reason of lunacy, or continued illness, or absence, incapable of performing his duties, or, if the Court is of opinion that his connection with or relation to the bankrupt, or his estate, or any particular creditor, makes his continuance in the office of trustee undesirable in the interests of the creditors generally, or where in any other matter he has been removed from office on the ground of misconduct, the Court may, having due regard to the opinion of the creditors as expressed at a meeting summoned for that purpose, remove him from office.

Imp. § 86.

**Proceedings on vacancy in office of trustee. 80.** 1. If any vacancy occurs in the office of trustee, the creditors in general meeting may fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing trustee, if there be one, or by the receiver on the requisition of any creditor, and thereupon the same proceedings shall be taken as in the case of a first appointment. 2. If the creditors do not within three weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the receiver shall report the matter to the Court, and the Court may appoint a trustee; but in such case the creditors or the committee of inspection shall have the same power of appointing a trustee as in the case of a first appointment. 3. During any vacancy in the office of trustee the receiver shall act as trustee.

Imp. § 87.

*Voting powers of trustee.*

**Limitation of voting powers of trustee. 81.** The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

Imp. § 88.

*Control over trustee.*

**Discretionary powers of trustee and control thereof. 82.** 1. Subject to the provisions of this Ordinance, the trustee shall, in the administration of the property of the bankrupt, and in the distribution thereof amongst the creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection. 2. The trustee may from time to time summon general meetings of creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise, may direct, or whenever any creditor, with the concurrence of one-sixth

in value of the creditors (including himself), shall request him in writing so to do, and the trustee shall call such meeting accordingly within fourteen days. Provided that such creditor shall deposit with the trustee a sum sufficient to pay the cost of summoning the meeting, such sum to be repaid to him out of the estate if the creditors or the Court so direct. 3. The trustee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy. 4. Subject to the provisions of this Ordinance, the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

Imp. § 89.

**Appeal to Court against trustee. 83.** 1. If the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the trustee, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just. 2. The Court shall take cognizance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by this Ordinance, and the rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Court by any creditor in respect thereto, the Court shall enquire into the matter and make such order as it shall think fit.

Imp. § 90.

## *Part VI. Jurisdiction, Procedure, and Powers of Court.*

### *Jurisdiction.*

**Bankruptcy matters how entitled. 84.** Subject to the rules, all bankruptcy matters shall be entitled "In bankruptcy."

**Jurisdiction in chambers and during vacation. 85.** 1. The Court may exercise the whole or any part of its jurisdiction during the vacation. 2. Subject to the provisions of this Ordinance and to the rules, any Judge of the Court may exercise in chambers the whole or any part of his jurisdiction.

Imp. § 98.

**General powers of Court. 86.** 1. Subject to the provisions of this Ordinance, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case. 2. If in any proceeding in bankruptcy, there arises any question of fact which either of the parties would be entitled to have tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may, if it thinks fit, direct the trial to be had with a jury, and the trial may be had accordingly, in the same manner as if it were the trial of an issue of fact in an action. 3. Where default is made by a trustee, debtor, or other person in obeying any order or direction given by the Court under any power conferred by this Ordinance, the Court may on the application of any person interested, order such defaulting trustee, debtor, or person to comply with the order or direction so given; and the Court may also, if it shall think fit, upon any such application make an immediate order for the committal of such defaulting trustee, debtor, or other person; provided that the power given by this subsection shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Imp. § 102.

### *Appeals.*

**Appeals in bankruptcy. 87.** 1. The Court may review, rescind, or vary any order made by it under its bankruptcy jurisdiction. 2. Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal in the same manner as other orders of the Supreme Court. 3. A trustee shall be deemed to be aggrieved by the refusal of an application made by him to the Court.

Imp. § 104.

### *Procedure.*

**Discretionary powers of Court. 88.** 1. Subject to the provisions of this Ordinance and to the rules, the costs of and incidental to any proceeding in the Court under



this Ordinance, shall be in the discretion of the Court. Provided that where any issue is tried by a jury, the costs shall follow the event, unless, upon application made at the trial for good cause shown, the Judge before whom such issue is tried shall otherwise order. 2. The Court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose. 3. The Court may at any time amend any written process or proceeding under this Ordinance, upon such terms, if any, as it may think fit to impose. 4. Where by this Ordinance or by the rules, the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court may think fit to impose. 5. Subject to the rules, the Court may in any matter take the whole or any part of the evidence either viva voce, or by interrogatories, or upon affidavit, or by commission. 6. For the purpose of approving a composition or scheme by joint debtors, the Court may if it thinks fit, and on the report of the receiver that it is expedient so to do, dispense with the public examination of one of such joint debtors, if he is unavoidably prevented from attending the examination by illness or absence abroad.

Imp. § 105.

**Consolidation of petitions.** 89. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court thinks fit.

Imp. § 106.

**Power to change carriage of proceedings.** 90. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor, to whom the debtor may be indebted in the amount required by this Ordinance in the case of a petitioning creditor.

Imp. § 107.

**Continuance of proceedings on death of debtor.** 91. If a debtor by or against whom a bankruptcy petition has been filed dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive. If the debtor dies before service of the petition, the Court may order service to be effected on the personal representatives of the debtor or on such other person as the Court may think fit, or may dispense with the same.

Imp. § 108.

**Power to stay proceedings.** 92. The Court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just.

Imp. § 109.

**Power to present petition against one partner.** 93. Any creditor, whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm, may present a petition against any one or more partners of the firm without including the others.

Imp. § 110.

**Power to dismiss petition against some respondents only.** 94. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

Imp. § 111.

**Property of partners to be vested in same trustee.** 95. Where a receiving order has been made on a bankruptcy petition against or by one member of a partnership, and any other bankruptcy petition against or by a member of the same partnership shall be filed, the Court may give such directions for consolidating the proceedings under the petitions as it thinks just, and the same trustee or receiver shall, unless the Court otherwise directs, be appointed as may have been appointed in respect of the property of the first named member of the partnership.

Imp. § 112.

**Actions by trustee and bankrupt's partners.** 96. Where a member of a partnership is adjudged bankrupt, the Court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the

Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

Imp. § 113.

**Actions on joint contracts. 97.** Where a bankrupt is a contractor bound in respect of any contract jointly with any person or persons, such person or persons may be sued in respect of the contract without the joinder of the bankrupt.

Imp. § 114.

**Proceedings in partnership name. 98.** Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings, or be proceeded against under this Ordinance in the name of the firm, but in such cases the Court may, on application by any person interested, order the names of the persons who are partners in such firm, or the name of such person, to be disclosed in such manner, and verified on oath, or otherwise as the Court may direct.

Imp. § 115.

**Execution of search warrant. 99.** A search warrant issued by the Court for the discovery of any property of a debtor may be executed in the manner prescribed, or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed.

Imp. § 119.

**Commitment to prison. 100.** Where the Court commits any person to prison the commitment shall be to the Royal gaol.

Imp. § 120.

### *Part VII. Small Bankruptcies.*

**Receiving order where debts or assets not likely to exceed £50. 101.** Where a judgment has been obtained in the Court, and the debtor is unable to pay the same forthwith, and alleges that the whole of his indebtedness amounts to a sum not exceeding £50, or that his property is not likely to realize £50, the Court may if it thinks fit make a receiving order against such debtor. Such order shall not be invalid by reason only that the total amount of the debts and of the property of the debtor divisible amongst his creditors are respectively found at any time to exceed £50, but the Court may set aside the order if it thinks fit.

[Imp. § 122.

**Effect of order. 102.** Where a receiving order is made under section 101 of this Ordinance: a) The debtor shall be deemed to have committed an act of bankruptcy at the time the request for the order was made; and the provisions of this Ordinance shall apply as if a bankruptcy petition had been presented on the day the request for the order was made and as if the debtor had been adjudged bankrupt on such petition; b) The bankruptcy of the debtor shall be deemed to have relation back to and to commence at the time of the request for the order, or if the bankrupt is proved to have committed any previous act of bankruptcy, then to have relation back to and to commence at the time of the first of the acts of bankruptcy proved to have been committed by the debtor within three months next preceding the date of the order.

**Summary administration in bankruptcy. 103.** [As amended by Ord. No. 31 of 1909, § 3]. Where a receiving order is made against a debtor: a) On a petition presented by or against such debtor and the Court is satisfied by affidavit or otherwise or the receiver reports to the Court that the property of the debtor is not likely to exceed in value £200; b) Or under section 101; the provisions hereinafter contained shall prevail that is to say: 1. The Court may appoint the receiver, or the Sub-Registrar of San Fernando, or the Sub-Registrar of Tobago, as the circumstances of the case may require, to be receiver, and such receiver shall be trustee of the estate of the debtor. The Sub-Registrars of San Fernando and Tobago shall, when appointed under this section, be subject to the provisions of subsection c of section 2 of the *Bankruptcy Ordinance, 1909*. 2. There shall be no committee of inspection, and the receiver may at his discretion do all the things which may be done by the trustee with the permission of the committee of inspection, provided that any person aggrieved or interested may appeal to a Judge in chambers. 3. Unless a statement of his affairs shall have been previously filed, the debtor shall within ten days from the date of the receiving order or such further time as the receiver may allow, file with the receiver a statement of his affairs as far as practicable in the form prescribed in Schedule III, and where the debtor is illiterate the receiver or his clerk shall prepare



such statement from information given by the debtor. 4. The debtor in his statement of affairs shall set out the information indicated in the said form, and mention all creditors having power to distrain, such as creditors for rent, rates, and taxes. Where a creditor is secured or any person in addition to the debtor is liable for any debt, the particulars and estimated value of the security or the name and address of such other person, shall be stated. 5. The statement of affairs shall contain a correct answer to the several questions mentioned in Schedule III. Where judgment has been obtained or proceedings are pending in any Court in respect of any scheduled debt, that fact shall be stated and the order or summons shall in each case be produced to the receiver. 6. The debtor shall verify by affidavit every statement of affairs, and shall state that he believes every statement therein contained to be true. 7. Upon the statement of affairs being filed, the receiver may appoint a day for the examination of the debtor, and shall together with a copy of the statement of affairs send a notice to all the creditors of the debtor stating the day and hour for such examination, which shall not be less than ten clear days from the day such notice shall have been posted or served. 8. Notice shall in like manner be sent to the debtor requiring him to produce all books of accounts, invoices, papers, summonses, or other documents relating to any debts owing by him or to him, or otherwise relating to the affairs of the debtor; and every non-compliance with such notice shall be an offence under this Ordinance unless the debtor had no intention to disobey such notice. 9. On the day appointed for the examination, the receiver shall examine the debtor on oath with reference to his statement, and may put such further questions and allow any creditor to ask such questions as the receiver may think fit, with a view of ascertaining the position of the debtor, the cause of his insolvency, the persons to whom he is indebted, or who are indebted to him, and of discovering all the property which is by this Ordinance divisible among the creditors of the debtor. For the purposes hereof the receiver shall have power to summon and examine witnesses and to administer oaths. The debtor and any such witness shall be bound to answer all questions put or allowed to be put by the receiver. Any person who in any examination upon oath before the receiver shall wilfully and corruptly give false evidence shall be guilty of perjury. 10. The examination of the debtor may if necessary be adjourned from time to time. 11. All answers modifying, altering, or explaining the statement of affairs, or giving additional information shall be taken down in writing, read over to or by the debtor, and signed by him. 12. On the appointment of a receiver all property divisible among the creditors of the debtor shall vest in the receiver, and the receiver shall forthwith proceed to realize the same by public or private sale. 13. The household goods, wearing apparel, and bedding of the debtor or his family and the tools and implements of his trade to the value in the aggregate of £10 shall not be divisible among the creditors of the debtor. 14. The Supreme Court or any inferior Court in which proceedings are pending by or against the debtor in respect of any liability shall on receiving notice of the receiving order, stay the proceedings and adjourn the same generally. Notice of any such proceedings shall be sent to the receiver and the receiver shall within six weeks from the date when such proceedings shall have been stayed, certify whether he intends to prosecute or defend the same on behalf of the debtor, and in the event of such proceedings continuing, the receiver shall be added as a party, and shall have the same rights as if he had been originally a party to such proceedings. 15. A receiver may send to any inferior Court the notice contained in Schedule IV hereto, and upon receipt thereof the clerk of such Court shall at three different sittings of such Court, read the same for the information of the public. 16. Any creditor of the debtor shall upon proof of his debt before the receiver be entitled to be scheduled as a creditor of the debtor for the amount of his proof; and any creditor may in the prescribed manner object to any scheduled debt. 17. Where any debt or liability is disputed and a compromise has not been effected, the validity thereof shall be determined in the ordinary course of law. 18. If the property of a debtor is insufficient to pay the costs of the administration of his estate, and his debts in full, he shall on a day to be fixed by the receiver, appear before the Court, and the Court may after hearing the report of the receiver, and the debtor, and any creditor or other person interested, as the Court shall think fit, make an order against the debtor for payment of his debts (including the costs of administration) by instalments or otherwise and either in full or to such extent as to the Court under the circumstances of the case appears practicable and reasonable, and subject to any conditions as to his future earnings

or income which the Court may think just. 19. The Court may if it thinks fit examine upon oath the debtor and any other person for the purpose of obtaining any additional information or for elucidating any statement in the debtor's statement of affairs or in his examination, and may ask such questions as it thinks fit. 20. Every order for payment under subsection 18 shall state whether such payment is inclusive or exclusive of the property of the debtor divisible among his creditors. And all payments by the debtor shall be made to the receiver. 21. An order under subsection 18 shall extinguish all the debts and liabilities of the debtor incurred at or before the date of the receiving order. 22. The Court may if it thinks fit at any time vary or alter any order made under subsection 18 or may make a new order in lieu thereof in any of the following cases: a) Where the same has been obtained by fraud or misrepresentation; b) Where the debtor has omitted from his statement of affairs the name of any creditor, or has scheduled a creditor for a sum greater or less than that due to such creditor; c) Where at the date of the order the whole of the property distributable among his creditors has not been disclosed; d) Where the debtor has been convicted of any offence under this Ordinance or otherwise arising in the course of the administration of his property under this Ordinance. 23. Where it appears that a debtor is or was unable to pay any instalment by reason of illness or other unavoidable misfortune, the receiver may from time to time suspend the operation of the order until the next sitting of the Court, and the Court may suspend the operation of the order for such time as may be just or may vary or make a new order for payment by instalments. 24. If at any time after the expiration of two years after the date of any order made under subsection 18 the debtor shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order or of any substituted order in such manner and upon such conditions as it may think fit. 25. If the debtor makes default in payment of any instalment payable in pursuance of any order under this section, he shall, unless the contrary be proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default, and to have refused or neglected to pay the same, and the Court may commit the debtor to prison for any term not exceeding six weeks or until payment of the amount due. 26. The property of a debtor and all moneys paid in pursuance of any order shall be appropriated in satisfaction of the costs of the administration and of the costs incidental thereto and then in liquidation of the debts of the debtor. 27. Any person who after the date of the receiving order becomes a creditor of the debtor, shall on proof of his debt before the receiver, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend until those creditors who are scheduled as having been creditors at the date of the order have been paid ten shillings in the pound. 28. A debtor against whom an order has been made under subsection 18 may at any time after compliance with such order, apply to the Court for a discharge, and the Court shall accordingly grant the same; provided that where any facts are proved, on proof of which the Court would be required to refuse, suspend, or attach conditions to the debtor's discharge under section 28, the Court may grant the discharge subject to such conditions, if any, as it thinks just. Provided that any debtor aggrieved by any such order may appeal to the Court of Appeal, and the Court of Appeal may hear such new or further evidence as it thinks fit, and shall make such order as shall under the circumstances of the case, seem just. 29. Subject to the provisions contained in this part of this Ordinance, the general provisions of this Ordinance shall apply so far as is practicable and so far as the same are not inconsistent with the provisions contained in this part of this Ordinance or with any rules made with the view of saving expense and simplifying procedure. 30. If the debtor wilfully fails to perform any of the duties imposed upon him under this section or to comply with any notice duly served upon him, the receiver shall report the same to the Court, and the Court shall have power, after inquiry to adjudge the debtor to be guilty of a contempt of court and to punish him accordingly. 31. "Inferior Court" includes any Court having limited jurisdiction in civil matters. "Order" and "order made under subsection 18" shall include any substituted order.

Imp. §§ 121, 122. The provisions of the *Bankruptcy Ordinance, 1909*, referred to in subsection 1, are incorporated in § 10, *supra*.



*Part VIII. Supplemental Provisions.**Application of Ordinance.*

**Exclusion of registered companies, etc. 104.** A receiving order shall not be made against any corporation, or against any partnership or association, or company registered under *The Companies Ordinance*, No. 69.

Imp. § 123.

**Administration in bankruptcy of estate of person dying insolvent. 105.** 1. Any creditor of a deceased debtor, whose debt would have been sufficient to support a bankruptcy petition against such debtor, had he been alive, may present to the Court a petition, in the prescribed form, praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy. 2. Upon the prescribed notice being given to the legal representative of the deceased debtor, the Court may, in the prescribed manner, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may upon cause shewn dismiss such petition with or without costs. 3. A petition for administration under this section shall not be presented to the Court after proceedings have been commenced under any other jurisdiction of the Court for the administration of the deceased debtor's estate; but the Court exercising such other jurisdiction may in such case, if satisfied that the estate is insufficient to pay its debts, in the prescribed manner, make an order for the administration of the estate of the deceased debtor under this Ordinance, and the like consequences shall ensue as under an administration order made on the petition of a creditor. 4. Upon an order being made for the administration of the deceased debtor's estate, the property of the debtor shall vest in a receiver to be appointed by the Court at the time of making such order, as trustee thereof, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Ordinance. Provided that the creditors shall have the same powers as to appointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Ordinance relating to trustees and committees of inspection shall apply to trustees and committees of inspection appointed under the power conferred by this section. The Court, if it thinks fit, may appoint the Administrator General receiver of a deceased debtor's estate. 5. Nothing herein contained shall affect an executor's right of retainer. 6. With the modifications hereinafter mentioned, all the provisions of Part III of this Ordinance, relating to the administration of the property of the bankrupt, shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Ordinance. 7. In the administration of the property of the deceased debtor under an order of administration, the receiver shall have regard to any claim by the legal representatives of the deceased debtor, to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order and be payable in full out of the debtor's estate in priority to all other debts. 8. If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the receiver after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Ordinance in case of bankruptcy, such surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed. 9. Notice to the legal representative of the deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the receiver; save as aforesaid, nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal representative before the date of the order for administration. 10. Unless the context otherwise requires "creditor" in this section means one or more creditors qualified to present a bankruptcy petition as in this Ordinance provided. 11. Rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy.

Imp. § 125; 53 & 54 Vic. c. 71, § 21.

*Rules.*

**Rules. 106.** The rules in the sixth Schedule hereto and all rules made under the authority of this Ordinance shall as to all matters to which they extend regulate proceedings under this Ordinance.

**Power to make rules. 107.** 1. The Chief Justice with the concurrence of a Puisne Judge, may from time to time revoke and alter the rules in the sixth Schedule hereto, and may from time to time make, revoke, and alter additional rules for carrying into effect the objects of this Ordinance, and in particular for all or any of the following matters: a) For regulating sittings of the Court and the Judges thereof in chambers; b) For regulating the practice and procedure in the Court; c) Generally for regulating any matters relating to the practice and procedure of the Court, or to the duties of the officers thereof or to the costs of or fees upon or percentages to be charged for or in respect of proceedings therein; and d) For altering or revoking any rules in the sixth Schedule hereto or made in pursuance of this Ordinance. 2. Provided always that any rules so made, revoked, or altered shall not extend the jurisdiction of the Court. 3. No such rules shall come into operation until the same shall have been laid before the Legislative Council and gazetted for one month; but when the same shall come into operation they shall have effect as if enacted by this Ordinance and shall be judicially noticed.

Imp. § 127.

*Evidence.*

**Gazette to be evidence. 108.** 1. A copy of the *Royal Gazette* containing any notice inserted therein in pursuance of this Ordinance shall be evidence of the facts stated in the notice. 2. The production of a copy of the *Royal Gazette* containing any notice of a receiving order, or of an order adjudging a debtor a bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

Imp. § 132.

**Evidence of proceedings at meetings of creditors. 109.** 1. A minute of proceedings at a meeting of creditors under this Ordinance, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof. 2. Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

Imp. § 133.

**Evidence of proceedings in bankruptcy. 110.** Any petition or copy of a petition in bankruptcy, any order, or certificate, or copy of an order or certificate made by the Court, any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceedings, or other proceedings had under this Ordinance, shall, if it appears to be sealed with the seal of the Court, or purports to be signed by a Judge thereof, or is certified as a true copy by the Registrar, be receivable in evidence in all legal proceedings whatsoever.

Imp. § 134.

**Death of witness. 111.** In case of the death of the debtor or his wife, or of a witness whose evidence has been received by the Court in any proceeding under this Ordinance, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

Imp. § 136.

*Time.*

**Computation of time. 112.** 1. Where by this Ordinance any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday or public holiday or day on which the offices of the Court are closed, in which case any act or proceeding shall be considered as done or taken in due time, if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified. 2. Where by this Ordinance any act or



proceeding is directed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time, if it is done or taken on the next day afterwards, which shall not be one of the days in the section specified.

Imp. § 141.

#### *Notices.*

**Service of notices. 113.** All notices and other documents for the service of which no special mode is directed, may be sent by prepaid post letter or left at the last known address or place of business of the person to be served therewith.

Imp. § 142.

#### *Formal defects.*

**Formal defects not to invalidate proceedings. 114.** 1. No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court. 2. No defect or irregularity in the appointment or election of a receiver, trustee, or member of a committee of inspection, shall vitiate any act done by him in good faith.

Imp. § 143.

#### *Stamp duty.*

**Exemption of deeds from stamp duty. 115.** 1. Every deed, conveyance, assignment, surrender, or other assurance relating solely to freehold or leasehold property, or to any mortgage, charge, or other incumbrance on, or any estate, right, or interest in any real or personal property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment, surrender, or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond, or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty except in respect of fees under this Ordinance. 2. For the purposes of this section "bankruptcy" shall include any proceedings before or after adjudication, whether adjudication is made or not, and "bankrupt" includes any debtor proceeded against under this Ordinance. 3. This section shall extend to estates of companies wound up under the Companies Ordinance No. 69.

Imp. § 144.

#### *Corporations, etc.*

**Acts of corporations, partners, and lunatics. 116.** For all or any of the purposes of this Ordinance a corporation may act by any of its officers authorized in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by his committee.

Imp. § 148.

#### *Rights of the Crown.*

**Certain provisions to bind the Crown. 117.** Save as herein provided, the provisions of this Ordinance relating to the remedies against the property of a debtor, the priorities of the debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown.

Imp. § 150.

#### *Unclaimed funds and dividends.*

**Unclaimed funds and dividends under this and former Ordinances. 118.** 1. Where the trustee under any bankruptcy, composition, or scheme pursuant to this Ordinance, shall have under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, such trustee shall have in his hands or under his control any unclaimed or undistributed monies, arising from the property of the debtor, he shall forthwith pay the same into Court. The Court shall cause him to be furnished with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof. 2. a) Where after the commencement of this Ordinance, any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or any other person empowered to collect, receive, or distribute any funds or dividends under the Bankruptcy Ordinance, No. 51, or any petition, resolution, deed, or other proceeding under or in pursuance of such Ordinance, have remained or remain unclaimed or

undistributed for six months after the same became claimable or distributable, or in any other case for two years after the receipt thereof by such trustee or other person, it shall be the duty of such trustee or other person forthwith to pay the same into Court. The Court shall cause such trustee or other person to be furnished with a receipt of the money so paid, which shall be an effectual discharge in respect thereof. b) The Court may at any time order any such trustee or other person to submit to it an account verified by affidavit of the sums received and paid by him under or in pursuance of any such petition, resolution, deed, or other proceeding as aforesaid, and may direct and enforce an audit of the account. 3. The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person. 4. Any person claiming to be entitled to any moneys paid into Court pursuant to this section may apply to the Court for payment to him he, and the Court if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due.

Imp. § 162.

### *Part IX. Punishment of Fraudulent Debtors.*

**Punishment of fraudulent debtors. 119.** Any person in respect of whose estate a receiving order is made under this Ordinance shall, in each of the cases following, be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour, that is to say: 1. If he does not, to the best of his knowledge and belief, fully and truly discover to the receiver or trustee administering his estate for the benefit of his creditors all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud. 2. If he does not deliver up to such receiver or trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud. 3. If he does not deliver up to such receiver or trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud. 4. If, being a trader and having debts to the amount of five hundred pounds sterling, or upwards, he has not kept such books of account as to enable the receiver or trustee to obtain a full and correct knowledge of his affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs, or otherwise to defraud. 5. If, after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud. 6. If, after the presentation of a bankruptcy petition by or against him or within four months next before such presentation, he fraudulently removes any part of his property of the value of ten pounds or upwards. 7. If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud. 8. If, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform such trustee as aforesaid thereof. 9. If, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs, or to defeat the law. 10. If, after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he conceals, destroys, mutilates, or falsifies or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law. 11. If, after the presentation of a bankruptcy petition by or against him or within four months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law. 12. If, after the presentation of a bankruptcy petition by or against him, or within



four months next before such presentation, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission in any document affecting or relating to his property or affairs. 13. If, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within four months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses. 14. If, within four months next before the presentation of a bankruptcy petition by or against him, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same. 15. If, within four months next before the presentation of a bankruptcy petition by or against him, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless the jury is satisfied that he had no intent to defraud. 16. If, within four months next before the presentation of a bankruptcy petition by or against him, he, being a trader, pawns, pledges, or disposes of otherwise than in the ordinary way of his trade, any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud. 17. If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs, or his bankruptcy.

Imp. § 163.

**Concealing and removing a debtor's property after presentation of petition.**

**120.** If any person, after the presentation of a bankruptcy petition by or against any debtor in respect of whose estate a receiving order is subsequently made, conceals or removes any part of the property of the debtor to the value of ten pounds or upwards, which ought by law to be divided amongst his creditors, such person shall be guilty of a misdemeanour, and on conviction shall be liable to a fine not exceeding £100, or in default to be imprisoned for any term not exceeding two years, with or without hard labour, unless the jury is satisfied he had no intent to defraud.

**Absconding with property. 121.** If any person against whose estate a receiving order is made, after the presentation of a bankruptcy petition by or against him, or within four months before such presentation, quits the Colony and takes with him, or attempts or makes preparation to quit the Colony and to take with him, any part of his property to the amount of twenty pounds or upwards, which ought by law to be divided amongst his creditors, he shall, unless the jury is satisfied that he had no intent to defraud, be guilty of felony, punishable with imprisonment for a term not exceeding two years, with or without hard labour.

**Fraudulently obtaining credit, etc. 122.** Any person shall in each of the cases following be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any term not exceeding one year, with or without hard labour, that is to say: 1. If in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud; 2. If he has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property; 3. If he has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

**False claims, untrue statements, etc. 123.** a) If any creditor in any bankruptcy, composition, or arrangement with creditors, makes any claim, proof, declaration, or statement of account which is untrue in any material particular, he shall, unless he shews he had no intention to defraud, on conviction be liable to a fine not exceeding £200, and in default to be imprisoned for a term not exceeding one year with or without hard labour. b) If a creditor obtains or receives any property or security from any person as an inducement for forbearing to oppose or for consenting to the discharge of a bankrupt, he shall be liable on conviction to a fine not exceeding three times the amount or value of the property or security, and in default to be imprisoned for a term not exceeding one year with or without hard labour. c) Fines imposed under this section and under section 120 shall be deemed part of the property of the debtor and shall vest in the trustee.

**Undischarged bankrupt obtaining credit up to £20. 124.** Where an undischarged bankrupt obtains credit to the extent of twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be

guilty of a misdemeanour; and on conviction shall be liable to be imprisoned for a term not exceeding one year with or without hard labour.

Imp. § 31.

**Order by Court for prosecution on report of trustee.** 125. Where the trustee or receiver of a bankrupt's estate reports to the Court that in his opinion any person has been guilty of any offence under this Ordinance, or where the Court is satisfied upon the representation of any creditor or member of the committee of inspection, that there is ground to believe that any person has been guilty of any offence under this Ordinance, the Court shall if it appears to the Court that there is reasonable probability that such person may be convicted, order the trustee or receiver to prosecute such person for such offence.

**Expenses of prosecution.** 126. Where the prosecution of any person under this Ordinance is ordered by the Court, the expenses of the prosecution shall be allowed, paid, and borne as expenses of criminal prosecutions are allowed, paid, and borne. Provided always that where no such order for prosecution has been made, the Judge before whom the case is tried shall have power if he thinks fit, to order that the expenses of such prosecution be allowed as if such order had been obtained, or that the same be paid out of the estate of the debtor.

**Form of indictment.** 127. In an indictment for an offence under this Ordinance, it shall be sufficient to set forth the substance of the offence charged in the words of this Ordinance specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant, or document of the Court acting under this Ordinance.

**Punishments cumulative.** 128. Where any person is liable under any other Ordinance or at common law to any punishment or penalty for any offence made punishable by this Ordinance, such person may be proceeded against under such other Ordinance or at common law or under this Ordinance, so that he be not punished twice for the same offence.

**Criminal liability after discharge or composition.** 129. Where a debtor has been guilty of any criminal offence, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge, or that a composition or scheme of arrangement has been accepted or approved.

Imp. § 167.

*Construction of former Ordinances, etc.*

**Bankruptcy Ordinance No. 51.** 130. Where in any Ordinance or instrument reference is made to the Bankruptcy Ordinance, No. 51, the Ordinance or instrument shall be construed and have effect as if reference were made therein to the corresponding provisions of this Ordinance.

**Solicitor's right of audience.** 131. Nothing in this Ordinance shall take away or affect any right of audience that any solicitor may have had at the commencement of this Ordinance, and every solicitor of the Supreme Court shall be, and may practise as a solicitor of and in the Court.

**Married women.** 132. Nothing in this Ordinance shall affect the provisions of the Married Women's Property Ordinance, No. 65.

**Removal of bankrupt from trusteeship.** 133. Where a bankrupt is a trustee within the Trustee Ordinance, No. 91, the Court may appoint a new trustee in substitution for the bankrupt (whether voluntarily resigning or not), if it appears to the Court expedient so to do, and all provisions of that Ordinance, and of any other Ordinance relative thereto, shall have effect accordingly.

*Registration, endorsements, etc., of receiving orders.*

**Registration of receiving orders.** 134. 1. The Registrar-General shall at the request of the receiver or trustee of a debtor's estate, register a receiving order or administration order made under this Ordinance. 2. Every order in bankruptcy, so long as the receiving order or administration order as the case may be is unregistered, shall be void as to any lands or interest in land affected by such order as against any subsequent bona fide purchaser or mortgagee of the same land or interest in land or any part thereof respectively without notice of such order. 3. The Registrar-General shall enter in a register book to be kept by him for such purpose a reference to all receiving orders and administration orders registered as aforesaid.



**Endorsements under Real Property Ordinance. 135.** 1. Where any part of the property of a debtor consists of land or any interest in land subject to the provisions of the Real Property Ordinance, No. 60, the Registrar-General shall at the request of the receiver or trustee and on production of an office copy of the receiving order or administration order, cause a note thereof to be endorsed on the grant or certificate of title evidencing title to such land or interest in land. 2. Where by virtue of this Ordinance or any rules made in pursuance thereof the property of a debtor is vested in a receiver or trustee and any part of such property consists of land or any interest in land subject to the provisions of the Real Property Ordinance, No. 60, the Registrar-General shall at the request of the receiver or trustee and on production of an office copy of the order or orders by virtue of which the property became so vested, cause such receiver or trustee as the case may be to be endorsed as proprietor of such land or interest in land on the grant or certificate of title and the duplicate thereof evidencing title to such land or interest in land. 3. Any such receiver or trustee shall for the purposes of the said Ordinance be deemed to be the registered proprietor of such land or interest in land.

**Registration fee. 136.** Upon registration of any order under either of the two preceding sections there shall be paid to the Registrar-General a fee of £1.

#### *Repeal.*

**Repeal. 137.** 1. The enactments described in the fifth Schedule hereto are hereby repealed. 2. The repeals effected by this Ordinance shall not affect: a) Anything done or suffered to be done before the commencement of this Ordinance under any Ordinance hereby repealed; nor b) Any right or privilege acquired, or duty imposed, or liability or disqualification incurred, under any Ordinance so repealed; nor c) Any fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed or to be committed against any enactment so repealed; nor d) The institution or continuance of any proceeding or other remedy, whether under any enactment so repealed or otherwise, for ascertaining any such liability or disqualification, or enforcing or recovering any such fine, forfeiture, or punishment, as aforesaid. 3. Notwithstanding the repeal effected by this Ordinance, the proceedings under any bankruptcy petition, liquidation by arrangement, or composition with creditors under the Bankruptcy Ordinance, No. 51, pending at the commencement of this Ordinance, shall, except so far as any provision of this Ordinance is expressly applied to pending proceedings, continue, and all the provisions of the Bankruptcy Ordinance, No. 51, shall, except as aforesaid apply thereto, as if this Ordinance had not passed.

Imp. § 169.

**Proceedings under Bankruptcy Ordinance No. 51. 138.** After the commencement of this Ordinance no composition or liquidation by arrangement under the Bankruptcy Ordinance No. 51, shall be entered into or allowed without the sanction of the Court; and such sanction shall not be granted unless the composition or liquidation appears to the Court to be reasonable and calculated to benefit the general body of creditors.

Imp. § 170.

### *Schedules.*

#### *The First Schedule.*

##### **Meetings of Creditors.**

1. The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.

2. The receiver shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the *Royal Gazette* and in a local paper if practicable.

3. The receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the causes of his failure, and any observations thereon which the receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the receiver most convenient for the majority of the creditors.

5. The receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court, or so required by any provision contained in this Ordinance.

6. Where for any reason, no valid resolution or real determination has been arrived at by the creditors at the first meeting of creditors, the Court may if it thinks fit, order a fresh first meeting to be called.

7. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting.

8. The receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint.

9. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

10. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

11. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

12. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

13. It shall be competent to the trustee or to the receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum. Provided that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

14. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

15. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

16. A creditor may vote either in person or by proxy.

17. Every instrument of proxy shall be in the prescribed form, and shall be issued by the receiver, or, after the appointment of a trustee, by the trustee.

18. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

19. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof for or against any specific resolution or for or against any specified person as trustee or member of a committee of inspection.

20. A proxy shall not be used unless it is deposited with the receiver or trustee before the meeting at which it is to be used.

21. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors, the Court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

22. A creditor may appoint the receiver of the debtor's estate to act in manner prescribed as his general or special proxy.

23. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place.

24. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.



25. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

26. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up, and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

27. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor. Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

### *The Second Schedule.*

#### **Proof of debts.**

##### *Proof in ordinary cases.*

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself, or by some person authorized by or on behalf of the creditor. If made by a person so authorized it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The receiver or trustee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding eight per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

##### *Proof by secured creditors.*

9. If a secured creditor realizes his security, he may prove for the balance due to him after deducting the net amount realized.

10. If a secured creditor surrenders his security to the receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

12. a) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value. b) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the Court may direct. If the sale be by public auction the creditor or the trustee on behalf of the estate may bid or purchase. c) Provided that the creditor may at any time by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the trustee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it: and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the Court, that the valuation and proof were made bona fide on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the trustee shall allow the amendment without application to the Court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation,

before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of Rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

17. Subject to the provisions of Rule 12, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Ordinance.

*Proof in respect of distinct contracts.*

18. If a debtor was at the date of the receiving order liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

*Periodical payments.*

19. Where any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

*Interest.*

20. 1. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six per centum per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment. 2. Where a debt has been proved upon a debtor's estate under this Ordinance, and such debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of the creditor to receive out of the estate any higher rate of interest to which he may be entitled after all debts proved in the estate have been paid in full.

*Debt payable at a future time.*

21. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of eight pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

*Admission or rejection of proofs.*

22. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

23. If the trustee thinks that a proof has been improperly admitted, the Court may, on the application of the trustee after notice to the creditor who made the proof, expunge the proof or reduce its amount.

24. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the Court may on the application of the creditor reverse or vary the decision.

25. The Court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or in the case of a composition or scheme, upon the application of the debtor.

26. For the purpose of any of his duties in relation to proofs, the trustee may take declarations which shall be in the form prescribed by the Rules.

27. The receiver before the appointment of a trustee shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

*The Third Schedule.*

*Statement of affairs.*

(Section 103.)

*Summary case.*

In the matter of the Estate of \_\_\_\_\_, Debtor

1. A receiving order was made against me on the \_\_\_\_\_ day of \_\_\_\_\_ .



2. I am indebted to the several persons hereinafter mentioned in the sums set opposite their names, and I am indebted to the best of my knowledge, information, and belief, to no other person whatsoever.

a) *List of unsecured creditors.*

Name of creditor.	Address.	Description.	What indebted for. Goods, loan, etc.	Amount of debt.
1				
2				
3				
4				
5				
6				
7				
8				

b) *List of secured creditors.*

Name of creditor.	Address.	Description.	Estimated Value. Nature of security.	Amount.

c) *List of persons entitled to distrain.*

Name of Creditor.	Address.	Description.	Agreement, etc., giving right to dis- train.	Amount now due.
1				
2				
3				

d) *Persons liable in addition to debtor for any debt.*

Name of person.	Address.	Description.	In respect of which debt is such person liable.

3. The several persons hereinafter mentioned are indebted to me in the sums set opposite their names, and to the best of my knowledge, information, and belief there is nor other person who is indebted to me.

Name of person.	Address.	Description.	What indebted for.	Amount.

**Questions to be answered by a bankrupt in statement of affairs.**

1. What is your age and occupation?
2. Where are you employed?
3. What wages are you getting?
4. Have you a wife or reputed wife?
5. What does your wife earn?
6. Have you any children living with you? What are their names and ages, and what do they earn?
7. Have you carried on any business within the last six years. If so what business, when and where?
8. Have you been in partnership with anyone. If so with whom and when?
9. Does any person owe you any money. If so who, for what, and how much?
10. Have you any landed property or any interest in land; if so what is that interest and where is the land?
11. Is any part of your land rented. To whom and at what rental?
12. Is your property mortgaged or is there any charge against it; if so give particulars?
13. Is your life insured; if so where?
14. Where are your policies? If deposited with anyone on what terms was the deposit made?
15. Is any action pending against you, and have you an action pending against anyone?
16. What creditors have you paid within the last three months?
17. Have you pledged any property, within the last six months, with whom and when? What is the value of the property pledged?
18. Has the pledged property been paid for?
19. Have you made a gift of land to any person during the last ten years; if so give particulars?
20. Have you made a gift of any personal property to any person during the last ten years? What were the gifts, what their value and to whom were they made?
21. How much in the pound do you propose to pay your creditors and by what instalments?

*The Fourth Schedule.***Notice of Receiving order.**

(Section 103.)

Notice is hereby given that a receiving order was made by \_\_\_\_\_ against  
 on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ . All persons having any claim against the said \_\_\_\_\_ are  
 requested to prove the same, and all persons indebted to the \_\_\_\_\_ are requested to pay the  
 same to \_\_\_\_\_ the receiver.

*The Fifth Schedule.*

The Bankruptcy Ordinance No. 51.  
 The Fraudulent Debtors Ordinance No. 52.  
 Section 5 of Ordinance No. 96.

*The Sixth Schedule.*

(General Rules under The Bankruptcy Ordinance, 1907.)

**b) No. 34 of 1907. An Ordinance to amend the Bankruptcy Ordinance, 1907 (30th December, 1907).**

[Repeals Ord. No. 8 of 1907, § 7 (3).]

**c) No. 31 of 1909. An Ordinance to amend the Bankruptcy Ordinance, 1907 (No. 8, 1907) (20th December, 1909).**

[1—4. Amend Ord. No. 8 of 1907, and are there incorporated.]



# Jamaica.

## Introduction.

### History and government.

The island of Jamaica was discovered by Columbus in the year 1494. It remained in the possession of Spain until 1655, when, during the war between Great Britain and Spain, the island was taken by the British forces sent out to the West Indies by the Lord Protector, Oliver Cromwell. The Government of the Commonwealth at once determined to encourage settlers from Great Britain and also from the British Settlements in America and the West Indies. In March, 1656, the commanders of the British Parliamentary forces in Jamaica sent a despatch to the Lord Protector setting forth the steps they were taking to encourage the settlement in the island of British subjects, pursuant to the Lord Protector's instructions which they had received by the 'Marston Moor' on the 15th January, 1656. To make a beginning, they stated that thirty acre plots of land were being offered to each of the soldiers of the army of occupation. Various papers in the Public Record Office shew that Cromwell and the Government of the Commonwealth were desirous of settling the new possession on the same footing, more or less, as the other West Indian Settlements of Barbados and Nevis.

After the restoration of Charles the Second in 1660, a Royal Proclamation, dated 14th December, 1661, confirmed the rights of the British subjects settled there, and others going thither to their allotments of land, and declared that all children of natural born subjects of England to be born in Jamaica should from their respective births be reputed to be, and should be free denizens of England, and should have the same privileges to all intents and purposes as free-born subjects of England.

The King of Spain with forces from Cuba attempted the re-conquest of the island in 1658, but failed; after that no further attempts were made. In 1667 a Treaty of Peace and Alliance between Spain and Great Britain was concluded at Madrid, and in 1670 a further treaty was concluded at Madrid, for the purpose of settling then existing differences in America and other questions. By this second treaty it was agreed that the King of Great Britain, his heirs and successors, should have, hold, keep, and always possess in full right of sovereignty, seignior, possession, and propriety all the lands, countries, islands, colonies, and other places in the West Indies, or in any part of America, which the said King of Great Britain then held and possessed.

Serious constitutional questions in respect of the legislative power of the King over the Colony subsequently arose between the Legislative Assembly of Jamaica and the Government of England.

The King in his Commission to the Earl of Carlisle of the 1st March, 30 Charles II, appointed him Governor of Jamaica, and by another Commission of 3d November, 32 Charles II empowered the Governor with the advice and consent of the Council to convene General Assemblies of the freeholders and planters within the Island, and constituted such assembly to be the General Assembly of Jamaica with power, with the advice and consent of the Governor and the Council, to make laws, which were to be as agreeable as conveniently might be to the laws of England, provided that the same should be transmitted within three months for the King's allowance and approbation, failing which such laws were to be void and of none effect and the Governor was to have a power to veto any such laws.

In Francis Hanson's account of Jamaica, written in 1682, and prefixed to the first collection of the laws of Jamaica, it is stated that all the judges and justices in Jamaica determined all pleas there according to the laws of England, pursuant whereunto that island had been governed; that the Supreme Court of Judicature had the same jurisdiction as the Courts of King's Bench, Common Pleas and Exchequer at Westminster, and that a Court of Chancery had been constituted of the Governor assisted by Masters in Chancery.

By the Imperial Act 26 & 27 Vic. c. 31 the Cayman Islands were brought within the legislative power of the Legislature of Jamaica, and, subject to certain

local regulations then in, or to come into, force, the laws then in force in Jamaica were to be deemed in force in the Cayman Islands so far as the same should be applicable.

In 1866 the Legislature of Jamaica passed two Acts: one 'to alter and amend the political constitution of the island,' and the other, an Act amending the same. By Imperial Act 29 & 30 Vic. c. 12 these two Acts, — the one abolishing absolutely the Legislative Council and House of Assembly, and the other empowering the Queen, in place of the legislature thus abolished, to create and constitute a government for the island and from time to time to alter and amend the same, — were to come into operation as soon as the assent thereto of the Queen in Council was proclaimed in Jamaica by the Governor.

In 1873 by Act of the Imperial Parliament (36 Vic. c. 6) the Queen was empowered on addresses from the Legislative Bodies of Jamaica and of the Turks and Caicos Islands to declare by Order in Council that those islands should be annexed to and form part of the Colony of Jamaica for all purposes whatsoever on such terms as the Queen should appoint. By Order in Council of 4th August, 1873, the terms and conditions on which the Turks and Caicos Islands were to form part of the Colony of Jamaica are set forth. By Letters Patent of March 3d, 1882, after reciting that possession of certain islands known as Morant Cays and Pedro Cays had been taken on behalf of the Crown in October, 1862, and in July, 1863, respectively, the Governor of Jamaica was authorized to make the islands dependencies of Jamaica by Proclamation, and accordingly by Proclamation of the 9th May, 1882 the annexation was declared on and from 1st June, 1882. By Order in Council dated 19th May, 1884 and amended by Order in Council dated 3d October, 1895, the Legislative Council was reconstituted of certain Government officials with the Governor as president, of such other persons, not exceeding ten, as the Crown should appoint, and of fourteen persons to be elected as therein provided.

By Letters Patent dated 29th July, 1887, the Crown declared that there should be a Captain-General and Governor-in-Chief of Jamaica and its dependencies and that appointment to the said office should be made by Commission under the Royal Sign Manual and Signet. The Patent declares the Governor's powers and authorities and the formalities to be observed by him on entering upon his office. It constitutes the Governor's Privy or Advisory Council; and enables the Governor to make grants of certain lands, to appoint Judges, Commissioners, and Justices of the Peace; to grant pardons, suspend government officers, and provides for the succession to the office on its becoming vacant; it requires all officers, civil and military, and other inhabitants of the colony to obey and assist the governor, and reserves powers to the Crown of revocation, alteration, and amendment. The Privy Council referred to in these Letters Patent now consists of the Lieutenant-Governors (if any), the senior Military Officer, the Colonial Secretary, the Attorney-General, and other persons named or approved of by the King.

### Law in force.

**Common Law.** For all legal purposes Jamaica must be regarded as a settled colony; as the English took possession the few Spanish inhabitants departed, leaving only some few hundreds of their black slaves behind. No stipulations as to Spanish law are to be found in the treaties: and, since the island came into British possession, no law other than that of England has ever been in force there.

By the Jamaican Act of 1 George II, c. 1, § 22, re-enacted 8 Vic. c. 16, all such laws and statutes of England as had theretofore been acted upon as laws in the island were made perpetual. The Chief Justice of Jamaica (W. A. Scarlett) in 1825 stated for the information of the Royal Commission on the Administration of Justice in the West Indies that the common law of England prevailed there.

**Mercantile Contracts.** The English common law, as varied by Jamaican Acts, is the law of contracts. By Jamaican Act 9 Geo. IV. c. 20 the Imperial Act 9 Geo. IV, c. 14. was (with the omission of s. 7 as to executory contracts of sale of goods) extended to the Colony, and thereby in actions of debt or simple contract no acknowledgment or promise is to be evidence of a new or continuing contract, so as to take the case out of the Statute of Limitations (21 James I. c. 16, extended to the Colony by Jamaican Act 1 Geo. II c. 1), or deprive any party of the benefit thereof, unless such acknowledgment or promise be made in writing signed by the party chargeable. By Law 9 of 1869 any person, not admitted



and enrolled in the Colony as an attorney, solicitor or proctor and not being a barrister-at-law, is subject to penalties for drawing up legal instruments for fee or reward or other remuneration.

**The Mercantile Law Amendment Act** (17 of 1872) enables the Court in all actions in the Supreme or District Courts (since Law 43 of 1887, the Resident Magistrate Courts) for breach of a contract to deliver specific goods for a price in money, to order execution against the defendant for delivery of the goods to the plaintiff on payment by him of the amount owing under the contract, without giving the defendant the option of retaining the same upon paying the damages assessed. A written guarantee to answer the debt of another person is not invalid by reason only that the consideration does not appear in writing, or by necessary inference from a written document. A guarantee on behalf of a person or on behalf of a firm or single person trading as a firm, made to a firm, or to a single person trading under the name of a firm, is not binding on the guarantor, in respect of anything done or omitted to be done after a change in the persons constituting the firm or in the person trading under the name of the firm, unless a contrary intention is expressed or implied. A surety who discharges a liability is entitled to an assignment of all securities held by the creditor and to stand in the place of the creditor for the purpose of all actions, either at law or in equity, in order to recover indemnification from the principal debtor for advances made and losses sustained as surety. All actions of account concerning the trade in merchandise between merchant and merchant, their factors, or servants, must be commenced within six years after the cause of action arises. Absence beyond seas, or the imprisonment of a creditor, does not, on that account only, extend the period of limitation in which actions are to be commenced as fixed by the Statute of Limitations (21 James I, c. 16, s. 3 and 4 Anne, c. 16, s. 17). Against joint debtors, as regards those not beyond the seas, the period of limitation within which the action must be brought is not extended by reason of one or more of the other joint debtors being beyond the seas; but on the return from beyond the seas of those debtors, the creditor is not barred as against them from his action by any judgment already obtained against such as were not beyond the seas. Acknowledgments or promises by agents duly authorised in writing have the same effect as the acknowledgments and promises in writing of their principals. No co-contractor or co-debtor loses the benefit of the Statute of Limitations, so as to become chargeable, by reason only of a payment made by any other co-contractor or co-debtor.

**Sale of Goods.** The Imperial Sale of Goods Act, 1893, was extended to the Colony by Law 12 of 1895 with the omission of section 22 as to sales in market overt.

**Companies.** In 1864 (Jamaican Act, 27 Vic. Sess. II, c. 4) an Act was passed for the incorporation and regulation of trading companies and other associations in Jamaica. The Act is divided into fifty-one sections. It is based on The Companies (Imperial) Act of 1862 (25 & 26 Vic. c. 89) so far as regards the formation of a company with limited liability under a memorandum and articles of association.

The memorandum and articles are required to be recorded in the office of the Island Secretary (now the Deputy Keeper of the Records); and thereupon the association becomes a body corporate by the name contained in the memorandum of association, capable of exercising all the functions of an incorporated company, having perpetual succession and a common seal, with power to hold lands. The certificate of the Deputy Keeper is conclusive evidence of due registration. The regulations as to shares and their transfer, and as to a register of members, annual lists of members, and liability of members on winding up, and as to directors, general meetings, voting and special resolutions, are adapted from the similar sections in the Imperial Act. Provisions as to winding up are not contained in this Act, but in the following year (1865) an Act was passed (Jamaican Act 28 Vic. c. 42) making provisions for the winding up of companies and associations in the Island. By the Law 23 of 1886 the Deputy Keeper of the Records must keep in the Record Office a Register of all companies, which is open to public inspection. The Companies Law, 1906 (No. 34), makes provisions for a change of name similar to the provisions in section 8, subsections (1) and (2) of the Imperial Companies Consolidation Act, 1908. It also enables the company to make changes in its share capital by conversion into stock, or, subject to an order of the Supreme Court, by reduction of capital generally, with provisions for the protection of credi-

tors similar to those in section 49 of the Imperial Companies Consolidation Act 1908; and by special resolution to modify its memorandum of association if authorised to do so by its regulations as originally formed or subsequently altered by special resolution, so as to divide its capital into shares of smaller amount than that fixed by its memorandum of association.

By Law 4 of 1908 a company registered under the Jamaican Companies Acts 1864 to 1906 is empowered by special resolution to alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, subject to confirmation by the Court, in accordance with provisions similar to those in section 9 of the Imperial Companies Consolidation Act, 1908.

Law 7 of 1909 provides for the registration of the memorandum of association, and empowers companies to change their names.

**Partnership.** In 1853, by the Jamaican Act 16 Vic. c. 21, limited partnerships were authorized in order, as the preamble of the Act stated, to encourage capitalists to embark their money in the business of commercial and other trading firms and to share in the profits of such business without incurring responsibility beyond the amount of their subscribed capital. No such limited partnerships were authorized in banking or insurance undertakings. The Act requires all persons desirous of forming such a partnership to sign a certificate of formation of limited partnership, disclosing the name of the firm, the nature of the business, and the names of the partners, distinguishing the general and special partners, and the amount of capital contributed by the special partners. This certificate, duly acknowledged and certified in accordance with the provisions of the Act, must be recorded in the office of the Island Secretary (now the Deputy Keeper of the Records) in a register which is open to public inspection, and further publicity is insured by requiring the certificate to be published in the Jamaican Gazette, and in default of such publication, the partnership is deemed a general co-partnership. The Act was slightly amended by the Law 16 of 1902, enabling the partnership to consist of one (instead of two) or more general partners. Subject to the provisions of these Jamaican Partnership Acts, the law of partnership is the same as that of England, and the Imperial Partnership Act of 1890, so far as it represents the rules of equity and common law applicable to partnership may be referred to for the law of Jamaica. Under the Bankruptcy Law, 33 of 1879, proceedings in bankruptcy may be instituted by or against any two or more partners in the name of their firm.

**Bills of Exchange.** The Bills of Exchange (Imperial) Act of 1882 was by Law 32 of 1893 extended to Jamaica, and by Law 7 of 1907 the Bills of Exchange (Crossed Cheques) Act (Imperial) of 1906 was also extended to the Colony.

**Maritime Law.** The Supreme Court exercises admiralty jurisdiction under the authority of the Colonial Courts of Admiralty Act, 1890. Its jurisdiction embraces all causes, civil and maritime, which are adjudicated upon according to the civil and maritime laws and customs of the High Court of Admiralty of England.

**Bankruptcy.** The Law of Bankruptcy is to be found in the following Jamaican Statutes. Law 25 of 1871, which repealed all laws then in force relating to Insolvency. This Law was, with the exception of a few sections, repealed by Law 33 of 1879, which at present remains the principal Bankruptcy Law of Jamaica. It was amended by Law 21 of 1882 (as to the commission payable to trustees in bankruptcy); by Law 8 of 1885 (as to goods, etc., in the possession, order, or disposition of debtors); by Law 21 of 1886 (as to married women trading separately); by Law 11 of 1888 (as to voluntary settlements, etc.); by Law 24 of 1892 (as to deceased bankrupts, orders of discharge); and by Laws 5 of 1894, and 8 of 1897 (as to unclaimed funds in bankruptcy); and by Law 38 of 1911 (as to undischarged bankrupts obtaining credit).

### Courts and procedure.

**Judicature.** The Supreme Court of Judicature was originally established by Royal instructions in the reign of Charles II, confirmed by the Colonial Act 33 Charles II c. 23. By the Judicature Law, 24, of 1879, the Court was re-constituted by consolidating the then existing Supreme Court, the High Court of Chancery, the Incumbered Estates Court, the Court of Ordinary, the Court for Divorce and



Matrimonial Causes, the Chief Court of Bankruptcy and the Circuit Courts. This Supreme Court of Judicature Law is divided into two parts: Part 1, relating to the establishment, jurisdiction, and procedure of the Supreme Court; and Part 2, containing saving provisions in relation to the existing Judges, Officers, jurisdictions, and procedure.

The Supreme Court consists of three judges: the Chief Justice and two Puisne Judges appointed by Letters Patent under the Seal of the Island issued by the Governor in pursuance of a Royal warrant or instructions received by him through one of the Principal Secretaries of State. The Supreme Court is a superior court of record, with jurisdiction co-extensive with that of each of the several Courts which were by this Law consolidated to form the Supreme Court, and of the Judges of these several Courts, and of the Governor, as Chancellor or Ordinary, acting in any judicial capacity.

The jurisdiction, so far as regards procedure and practice, is exercised in the manner provided by this Law and the Civil Procedure Code, and the laws regulating criminal procedure, and by the rules and orders of the Court made pursuant to this Law, and in the absence of special provision in this Law, in such Code or Laws, or in such rules or orders of the Court, the jurisdiction is the same as that of the Courts whence the transfer was made.

The Law 25 of 1879 was passed for the purpose of repealing any Law making provision for matters for which better provision had been made by the Judicature Law, 24 of 1879, and the Civil Procedure Code of the same session: Law 39 of 1879. (Repealed by the Civil Procedure Code 1888, q. v. *infra*.)

**Civil Procedure.** The Civil Procedure Code, Law 40 of 1888, regulates under fifty-two titles the whole course of litigation from the first commencement of an action until the final decree or judgment is pronounced and the proceedings to enforce the same are instituted.

The Arbitration Law, 33 of 1900, makes a submission to arbitration by written agreement irrevocable, unless a contrary intention is expressed, and of the same effect as if made by order of the Supreme Court. In the absence of any expression of contrary intention all submissions are to be deemed to include the provisions of the Arbitration Law as to arbitrations, umpires, examination of witnesses on oath, awards, and costs. Power is given to the Supreme Court or a Judge thereof to stay proceedings commenced at law in matters under arbitration; and to appoint arbitrators and exercise control in other matters. The award of the arbitrator may by leave of the Supreme Court or a Judge thereof be enforced as a judgment or order of the Supreme Court.

References to the Registrar or a Special Referee may be made by the Supreme Court or a Judge thereof of questions arising in any cause or matter (other than criminal proceedings by the Crown), and by consent of parties the whole cause or matter may be thus referred. Reference by order of the Supreme Court, or a Judge thereof, makes the Registrar, Special Referee or arbitrator an officer of the Supreme Court, and subject to the Civil Procedure Code (except those sections repealed by this Arbitration Law), and the Rules of the Supreme Court under the Judicature Law, 1879.

By Law 22 of 1902<sup>w</sup> power is given to the Chief Justice, with the concurrence of the Puisne Judges of the Supreme Court, to make rules under the Judicature Law 1879 for the purpose of amending the Civil Procedure Code, 1888, and regulating the practice and procedure of the Supreme Court. Such rules are not to affect the mode of oral evidence in trials by jury or the rules of evidence or law relating to juries; nor to prejudice rights of trial by jury.

All rules must be submitted to the Legislative Council, and if annulled are void.

The jurisdiction of the Resident Magistrates' Courts, which by Law 43 of 1887 superseded the District Courts, including the City of Kingston Court, is by Law 28 of 1904 extended to common law actions arising from tort or contract on claims not exceeding £50 against defendants within the local jurisdiction of the Court, and by consent of both parties, to personal actions without limit as to amount. The Courts have jurisdiction to issue interpleader summonses in respect of claims to goods taken in execution under process of the Court; to grant replevins; to issue orders for the delivery up of the possession of land; to deal with claims for rent or mesne profits up to £50, and to entertain claims for re-entry in respect of land let at yearly rentals not exceeding £25, and plaints

by the Crown for the recovery of possession from persons occupying without any title; and to determine disputes as to title to land not exceeding £12 annual value.

The Resident Magistrates' Courts exercise a local jurisdiction as to equitable claims in various suits against estates not exceeding £200 in amount.

**Appeals to Privy Council.** Under the Order in Council of 15th February, 1909, an appeal lies from the Supreme Court to the Privy Council in cases where the amount involved is £300, or over. The appeal must be brought within twenty one days, and security to an amount not exceeding £500 must be furnished within three months.

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Name of report.	No. of volumes.	Period.	Method of citation.
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Jamaica Law Reports	2 pts.	1855—1876	(1—2) J.L.R.
Jamaica Law Reports (New Series)	2	1905—1906	(Date) J.L.R.

<sup>1</sup>) Official edition within the meaning of the Imperial *Evidence (Colonial Statutes) Act, 1907*. — Law 3 of 1908, as amended by Law 2 of 1909.



## Statutes.

### A. Jamaica.<sup>1)</sup>

#### Application of Law.

Under the Colonial Act 1 Geo. II., c. 1, s. 22, re-enacted in 8 Vic. c. 16, s. 7, it is provided that all such laws and statutes of England as have been at any time esteemed, introduced, accepted, or received as laws on the Island, shall be deemed to be in force.

As to the interpretation of these sections, see 2 Chalmers's Opinions, p. 7. Where no trace can be discovered of an English statute having been acted on it will not be deemed to have been "esteemed, introduced, used, accepted, or received," within the meaning of § 22. — *Magnus v. Sullivan*, (1866), decided by the Jamaica Supreme Court, and cited in the Preface by E. St. John Branch, Attorney-General, to the Index to the Laws of Jamaica, p. 11. But § 22 applies only to statutes and such portion of the common law of England as are applicable to local circumstances. *Jacquet v. Edwards* (1867), decided by the Jamaica Supreme Court, and cited, *ibid.* Among the laws of a commercial nature enumerated in the Preface above cited are the following: 27 Eliz. c. 4, by Law No. 11 of 1888, § 2; 21 Jac. I. c. 16, by 9 Geo. 4. c. 20; 29 Car. II. c. 3., the Statute of Frauds, by Law No. 12 of 1895, § 57, which provides that the English Act is to continue in force except as to §§ 16 and 17.

#### Partnership.<sup>2)</sup>

##### a) 16 Vic. c. 21. An Act to authorize Limited Partnerships throughout the Island (1853).

**Limited partnerships. Proviso. 1.** From and after the first day of July, one thousand eight hundred and fifty-three, limited partnerships may be established in this Island for the transaction of any mercantile, mechanical, agricultural, or manufactory business, by two or more persons, upon the terms, with the rights and powers, and subject to the conditions, limitations, restrictions, and liabilities herein mentioned. Provided always, that nothing herein contained shall be construed to authorize or empower any such limited partnership to be formed for the purpose of banking or making insurance.

**Number, denomination, and liabilities of partners. 2.** Such partnerships may consist of one or more persons, who shall be general partners, subject to the same liabilities and charges, and shall be entitled to the same benefits and advantages, as copartners are now by law liable to, chargeable with, and entitled to, and of one or more persons who shall contribute in actual cash payments, a specific sum, as capital, to the common stock, who shall be called special partners, but who shall not be liable for, nor chargeable with, the payment of the debts of the partnership, beyond the extent of the fund so subscribed by him or them to the capital of the co-partnership.

See Law No. 16 of 1892, § 1, *infra*.

**Power of general partners. 3.** The general partners only shall have power and authority to transact the business of, and sign for and bind, the partnership.

**Persons desirous of forming partnership as general partners to make certificate. 4.** The persons desirous of forming any such partnership as general partners shall make and severally sign a certificate, in the form to the Schedule of this Act marked with the letter A, which shall contain: First, The name or firm under which such partnership is to be conducted; Second, The general nature of the business so to be transacted; Third, The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their

<sup>1)</sup> As in force 1st January, 1912. — <sup>2)</sup> The law relating to general partnerships is not codified. A mere joint interest in a single adventure does not create a general partnership. — *Tyler v. French*, (1783), Grant N.C. 119. But may bind the parties coextensively with that adventure. — *Tucker v. Sinclair*, (1784), Grant N.C. 142.

respective places of residence; Fourth, The amount of capital which each special partner shall have contributed to the common stock; Fifth, The period at which the partnership is to commence, and the period at which it will terminate.

See Law No. 16 of 1892, § 2.

**Certificate to be acknowledged by persons signing same.** 5. The certificate shall be acknowledged by the several persons signing the same (where such persons shall be resident in this Island) before a Judge of the Supreme Court or Assize Court, Chairman of Quarter Sessions, or Stipendiary Justice. And such acknowledgment shall be made and certified in the same manner as the acknowledgment or probate of the execution of a conveyance of land.

**Signature by attorney.** 6. Where a special partner shall be absent from this Island, the certificate shall be signed and acknowledged by his lawful attorney or attorneys duly constituted and appointed either by a special power or by a general power containing a special authority to act in the premises, before a Judge, Chairman of Quarter Sessions, or Stipendiary Justice, as aforesaid; and such acknowledgment shall be made and certified in the same manner, and shall have the same validity, as the acknowledgment or probate of the execution of a conveyance of land. Provided always, that before the certificate shall be so signed and acknowledged, the special power or general power of attorney, as the case may be, shall be duly recorded in the Secretary's office of this Island.

**Affidavit to be filed with certificate.** 7. With the original certificate with the evidence of the acknowledgment thereof as before directed, shall be, an affidavit of one or more of the general partners, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually and in good faith paid in cash.

**Certificate to be recorded.** 8. The certificate so acknowledged and certified shall be filed in the office of the Island Secretary, and shall also be recorded by him at large in a separate book to be kept by him for that purpose, in like manner and at the same rate of charges as the other records in his office, and shall be kept open to public inspection; and a copy certified by the Island Secretary shall be evidence in all Courts and places of the facts therein contained.

**No partnership deemed to have been formed until certificate, etc., made, etc.** 9. No such partnership shall be deemed to have been formed under the provisions of this Act until a certificate, probate, and affidavit shall have been made, acknowledged, filed, and recorded.

**False statements in certificate.** 10. If any person shall make any false statement in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners; and the person making the affidavit shall be liable to all the pains and penalties of wilful and corrupt perjury.

**Terms of partnership to be made public.** 11. [As amended by Law No. 16 of 1892, § 4.] The terms of the partnership, after the certificate, probate, and affidavit shall have been so recorded and registered as aforesaid, shall be published for at least six weeks, immediately after such recording and registration, in the *Jamaica Gazette by Authority*, and in such two newspapers published in this Island as shall in each case be designated by the Attorney-General, by writing under his hand, and if such publication be not made the partnership shall be deemed general.

**Renewal, etc., of partnership.** 12. Every renewal, alteration, or continuance of such partnership beyond the time originally fixed for its duration, shall be certified, acknowledged, and recorded, and an affidavit made and filed, and notice given, in the same and like manner as herein required for the original formation of such partnership; and every such partnership which shall be renewed, altered, or continued without such re-registration shall be deemed and taken to be a general partnership.

**What to be deemed a dissolution of partnership.** 13. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on after any such alteration shall have been made, shall be deemed and taken to be a general partnership, unless renewed as a special partnership, according to the provisions of this Act, in the manner herein described.

**How partnership to be conducted.** 14. The business of the partnership shall be conducted under a firm in which the names of all or some of the general partners only shall be used, without the addition of the word "company" or any other general



term; and if the name of any special partner shall be used in such firm with his privity or consent, he shall be deemed and taken to be a general partner.

**Actions to be brought by and against general partners only.** 15. Actions and suits at law or in equity in relation to the business of the partnership may be brought and conducted by and against the general partners only, in the same manner as if there were no special partners.

**Sum contributed by special partner not to be withdrawn, etc.** 16. No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him, in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided, he may also receive his portion of such profits, and the same shall not be deducted from the principal paid by such partner.

**Capital not to be reduced by payments to special partner.** 17. If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital, with interest thereon, from the time he received the same.

**Special partner not to interfere in management.** 18. A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management; but he shall not transact any business in the name or on account of the partnership, nor be employed for that purpose, as agent, attorney, or otherwise; and if any such limited partner shall interfere, contrary to the provisions of this Act, he shall be deemed and taken to be a general partner.

**General partners liable to account for each other and to special partners.** 19. The general partners shall be liable to account for each other, and to the special partners, for their management of the partnership, both in law and equity, in like manner as other partners now are liable to.

**Partner guilty of fraud liable civilly and criminally.** 20. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable, civilly, to the party injured, to the extent of his damage, and shall also be liable to an indictment for a misdemeanour, punishable by fine or imprisonment, or both, in the discretion of the Court by which he shall be tried.

**Fraudulent assignments, etc., void.** 21. Every sale, assignment, or transfer of any of the property or effects of such partnership, made by such partnership when insolvent, or in contemplation of insolvency, or after or in the contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership; and every judgment confessed, lien created, or security given, by such partnership, under the like circumstances, and with the like intent, shall be void, as against the creditors of such partnership.

**Fraudulent assignment, etc., by individual partner void.** 22. Every such sale, assignment, or transfer of any of the property or effects of a general or special partner, made by such general or special partner when insolvent, or in contemplation of insolvency, or after or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own, or of the partnership, a preference over creditors of the partnership, and every judgment confessed, lien created, or security given by any such partner, under the like circumstances and with the like intent, shall be void as against the creditors of the partnership.

**Breach of any provision of last two sections.** 23. Every special partner who shall violate any provision of the two last preceding sections, or who shall concur in, or assent to, any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

**On dissolution special partner not to withdraw his capital until creditors satisfied.** 24. On the dissolution, or in case of the insolvency or bankruptcy, of the partnership, no special partner shall, under any circumstances, be allowed to withdraw any part of his capital, or to claim as a creditor, until the claims of all the other creditors of the partnership, and all charges thereon, shall be fully paid and satisfied.

**Provision as to dissolution.** 25. No dissolution of such partnership by the acts of the parties shall take place previous to the time specified in the certificate of its

formation or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the secretary's office, and published once in each week, for four weeks, in the *Jamaica Gazette by Authority*, (or in case such Gazette shall cease to be published, then in such other newspaper as the Commissioners of Public Accounts shall direct).

See Law N. 16 of 1892, § 6, *infra*.

### Schedule.

#### Forms referred to.

##### No. 1. Certificate of formation of limited partnership.

This is to certify, that we, whose names are severally undersigned, are desirous of forming a limited partnership, and

First, That the name or firm under which such partnership is to be conducted is (*here mention the name or firm as "George Thompson," or "Thompson and Black," as the case may be.*)

Second, That the general nature of the business intended to be transacted by such partnership is as follows: (*here insert the general nature and character of the business intended to be carried on.*)

Third, That the names of all the general and special partners interested in the said copartnership are as follows: (*here insert the names and places of residence of each partner, and specify which are general and which special partners, as thus: George Thompson, James Black, Henry Lloyd, and Alfred Smee; that the said George Thompson is a general partner, and his place of residence is in the city and parish of Kingston; that the said James Black is a general partner, and his place of residence is also in the city and parish of Kingston; that the said Henry Lloyd is a special partner, and his place of residence is in the city of London, in the county of Middlesex, in Great Britain; and that the said Alfred Smee is a special partner, and his place of residence is also in the city of London, in the county of Middlesex, in Great Britain, or as the case may be.*)

Fourth, That the amount of capital which each of the said special partners has contributed to the common stock of the said partnership is as follows: (*insert as thus, or as the case may be: The said Henry Lloyd, the sum of one thousand pounds sterling; and the said Alfred Smee the sum of five hundred pounds sterling.*)

Fifth, That the period at which the said partnership is to commence is the                      day of                      , one thousand eight hundred and fifty-                      (*insert the date, which should be after the certificate is filed and recorded*); and the period at which the said partnership is to terminate is the                      day of                      one thousand eight hundred and                      (*insert the date*).

As witness our hands on this                      day of                      one thousand eight hundred and

(Signed)

G. Thompson.  
James Black.  
Henry Lloyd.  
Alfred Smee.

##### No. 2. Judge's certificate.

*Jamaica, ss.*

Be it remembered that on this                      day of                      one thousand eight hundred and                      personally came before me the above named George Thompson and James Black, the persons described in, and who signed, the above certificate, and who severally acknowledged to me that they severally signed the said certificate.

(Signed)

A.B., etc.

##### No. 3. Judge's certificate.

*Jamaica, ss.*

Be it remembered that on this                      day of                      one thousand eight hundred and                      personally came before me                      the true and lawful attorney of the above named (the absentee special partner) the person named in, and who signed the name of the said (the special partner) to the above certificate as the true and lawful attorney of the said (the special partner) and who acknowledged to me that he signed the said certificate.

A.B. etc.

##### No. 4. Affidavit to be filed with the certificate.

*Jamaica, ss.*

George Thompson, of the city and parish of Kingston, maketh oath and saith, that he is one of the general partners named in the above written (or annexed) certificate, and that the several



sums specified in the said certificate to have been contributed by each of the special partners in the said certificate named to the common stock of the said partnership in the said certificate also named, have been actually and in good faith paid in cash.

(Signed)

G. Thompson.

Sworn, etc.

#### No. 5. Advertisement of terms of partnership.

[Publish the certificate of formation of limited partnership, as recorded in the Secretary's office.]

### b) No. 16 of 1892. A Law to amend the Limited Partnerships Law, 16 Vic. C. 21 (14th May, 1892.)

**Section 2 of 16 Vic. c. 21, amended.** 1. Section 2 of 16 Vic. c. 21, is amended to the extent that such partnerships may consist of one or more persons who shall be general partners.

**Certificates, how acknowledged and proved.** 2. The certificate mentioned in section 4 of the said Act may be acknowledged and proved abroad; and in amendment of sections 5 and 6 of the said Act it is hereby provided that the said certificate shall no longer be acknowledged and proved before the officers in the said sections mentioned, but shall be acknowledged and proved, whether within the Island or abroad, before the same persons and subject to the same provisions as is by law provided in the case of deeds to be acknowledged and proved within the Island or abroad.

**Provisions as to declarations.** 3. Where in the said Act an affidavit is required to be made in proof of any fact a declaration shall be substituted, and such declaration may be made in this Island or abroad, by virtue of this law, before such persons, as are authorized to take declarations under the *Voluntary Declarations Law, 1884*, or the British Statute, the *Voluntary Declarations Act, 1835*, and, notwithstanding anything in the said law, such declaration shall not be required to be filed but only recorded like other documents in the Island Record Office.

[4. Amends 16 Vic. c. 21, § 11, and is there incorporated.]

**Proof of publication.** 5. Such designation and publication may be proved by a declaration made before a Justice of the Peace, and may be lodged with the Deputy Keeper of the Records, who shall preserve the same, and shall cause to be noted on the record of the certificate of partnership the fact that due publication has been duly proved, and such declaration or note shall be prima facie evidence of such fact.

**Section 25 of same Act amended.** 6. Section 25 of the same Act is amended by requiring that the notice by that section required to be advertised, besides being advertised in the *Jamaica Gazette*, shall be also advertised in such two newspapers published in the Island as shall be designated by the Attorney-General in manner hereinbefore provided, and proof of such designation and publication may be made by declaration before a Justice of the Peace.

### Companies.<sup>1)</sup>

#### a) 27 Vic. Sess. II. c. 4. An Act for the Incorporation and Regulation of Trading Companies, and other Associations (1864).

**Formation of company.** 1. Any seven or more persons, associated for any lawful purpose, may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company, with or without limited liability.

Imp. § 2.

**Limitation of liability.** 2. The liability of the members of a company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount

<sup>1)</sup> The references (Imp). in the notes are to the *Imperial Companies (Consolidation) Act, 1908*, (8 Edw. 7, c. 69).

as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

**Imp. § 2.**

**Memorandum of association of company limited by shares. 3.** Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of the association shall contain the following things (that is to say): 1. The name of the proposed company with the addition of the word "limited" as the last word in such name. 2. The part of the Island in which the office of the company is proposed to be situate. 3. The objects for which the proposed company is to be established. 4. A declaration that the liability of the members is limited. 5. The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount. Subject to the following regulations: 1. That no subscriber shall take less than one share. 2. That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

**Imp. § 3.**

**Memorandum of association of a company limited by guarantee. 4.** Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following things (that is to say): 1. The name of the proposed company with the addition of the word "limited" as the last word in such name. 2. The part of the Island in which the office of the company is proposed to be situate. 3. The objects for which the proposed company is to be established. 4. A declaration that each member undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the company; and, for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

**Imp. § 4.**

**Memorandum of association of unlimited company. 5.** Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association shall contain the following things (that is to say): 1. The name of the proposed company. 2. The part of the Island in which the office of the company is proposed to be situate. 3. The objects for which the proposed company is to be established.

**Imp. § 5.**

**Signature, and effect of such. 6.** The memorandum of association shall be signed by each subscriber in the presence of and be attested by one witness at the least. It shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

**Imp. § 14.**

**Power to alter. 7.** [As amended by Law No. 34 of 1906, § 2.] Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares or to convert its paid-up shares into stock; but, save as aforesaid, no alteration shall be made by any company in the conditions contained in its memorandum of association.

**Imp. § 7.**

**Articles of association. 8.** The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee, or unlimited, be accompanied, when registered, by articles of association, signed by the subscribers to the memorandum of association, and prescribing such regulations



for the company as the subscribers to the memorandum of association deem expedient.

Imp. § 10.

**Signature and effect of articles of association.** 9. The articles of association shall be signed by each subscriber in the presence of and be attested by one witness at the least. They shall bind the company, and the members thereof, to the same extent as if each member had subscribed his name, and affixed his seal thereto, and there were in such articles contained a covenant, on the part of himself, his heirs, executors, administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act; and all moneys payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt from such member to the company.

Imp. § 14.

**Recording.** 10. The memorandum of association, and the articles of association, if any, shall be recorded in the office of the Island Secretary.

Imp. § 15.

**Effect of recording.** 11. Upon the recording of the memorandum of association, and of the articles of association, in cases where articles of association are required by this Act, the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate, by the name contained in the memorandum of association, capable of exercising all the functions of an incorporated company, and having perpetual succession, and a common seal, with power to hold lands. A certificate given by the Island Secretary that all the requisitions of this Act in respect to registration have been complied with shall be conclusive evidence thereof.

**No two companies to have same name.** 12. [As amended by Law No. 24 of 1906, § 3]. No company shall be recorded under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved, and testifies its consent in writing to the Deputy Keeper of the Records; and if any company through inadvertence or otherwise, is, without such consent as aforesaid registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company may, with the sanction of the Deputy Keeper of the Records, change its name, and upon such change being made, the Deputy Keeper of the Records shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation, altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted, or to be instituted, by or against the company, and any legal proceedings may be continued or commenced against the company by its new name, that might have been continued or commenced against the company by its former name.

**Shares to be personal estate.** 13. The shares or other interest of any member in a company under this Act shall be personal estate, capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real estate; and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

Imp. § 8.

**Who to be considered members.** 14. The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed; and, upon the registration of the company, shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company.

Imp. § 24.

**Transfer by personal representative.** 15. Any transfer of the share or other interest of a deceased member of a company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Imp. § 29.

**Register of members. 16.** Every company under this Act shall cause to be kept, in one or more books, a register of its members, and there shall be entered therein the following particulars: 1. The names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid, or agreed to be considered as paid, on the shares of each member. 2. The date at which the name<sup>1)</sup> of any person was entered in the register as a member. 3. The date at which the name of any person ceased to be a member; And any company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues; and every director or manager of the company who shall knowingly and wilfully authorize or permit such contravention shall incur the like penalty.

Imp. § 25.

**Annual list of members. 17.** Every company under this Act having a capital divided into shares shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings, is held, are members of the company; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain therein a summary specifying the following particulars: 1. The amount of the capital of the company, and the number of shares into which it is divided. 2. The number of shares taken from the commencement of the company up to the date of the summary. 3. The amount of calls made on each share. 4. The total amount of calls received. 5. The total amount of calls unpaid. 6. The total amount of shares forfeited. 7. The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them. The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section; and a copy shall forthwith be recorded in the office of the Island Secretary.

Imp. § 26.

**Default in recording list. 18.** If any company under this Act, having a capital divided into shares, makes default in complying with the provisions of this Act with respect to recording such list of members or summary as is hereinbefore mentioned within one month, such company shall incur a penalty not exceeding five pounds for every day during which default continues; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 26.

**Certificate of shares. 19.** A certificate under the common seal of the company, specifying any share or shares of stock held by any member of a company, shall be prima facie evidence of the title of the member to the share or shares or stock therein specified.

Imp. § 23.

**Inspection of register. 20.** The register of members, commencing from the date of the registration of the company, shall be kept at the office of the company hereinafter mentioned, except when closed as hereinafter mentioned. It shall, during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day of one day in every week be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe for each inspection. If such inspection is refused, the company shall incur, for each refusal, a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and every director and manager of the company who shall knowingly authorize or permit such refusal shall incur the like penalty.

Imp. § 30.

**Power to close register for limited time. 21.** Any company under this Act may, upon giving notice by advertisement in some newspaper published within this

<sup>1)</sup> The words "the name" are not in the original.



Island, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Imp. § 31.

**Increase of capital or members to be recorded.** 22. Where a company has a capital divided into shares, any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, any increase in the number of members beyond the registered number, shall be recorded in the office of the Island Secretary; in the case of an increase of capital, within thirty days from the date of the passing of the resolutions by which such increase has been authorized; and, in the case of an increase of members, within thirty days from the time at which such increase of members has been resolved on, or has taken place. If such increase is not recorded within the period aforesaid, the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect continues; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 44.

**Remedy for improper entry or omission of entry in register.** 23. If the name of any person is, without sufficient cause, entered in, or omitted from the register of members of any company under this Act, or if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, by motion in the Supreme Court, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application, or petition, and any damages the party aggrieved may have sustained. The Court may, in any proceeding under this section, decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register.

Imp. § 32.

**Order rectifying register to be recorded.** 24. Whenever any order has been made rectifying the register, the Court may, by its order, direct that such rectification be recorded in the office of the Island Secretary.

Imp. § 32.

**Evidence.** 25. The register of members shall be prima facie evidence of any matters by this Act directed or authorized to be inserted therein.

Imp. § 33.

**Liability of members of company in case of dissolution.** 26. In the event of a company formed under this Act being wound up or dissolved, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following (that is to say): 1. No past member shall be liable to contribute to the assets of the company, if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up. 2. No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member. 3. No past member shall be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act. 4. In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member. 5. In the case of a company limited by guarantee no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association. 6. Nothing in this Act shall invalidate any provision contained in any policy of insurance, or other contract, whereby the liability of individual members upon any such policy

or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract. 7. No sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company payable to such member, in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

Imp. § 123.

**Company to have office.** 27. Every company under this Act shall have an office to which all communications and notices may be addressed. If any company under this Act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Imp. § 62.

**Notice of situation of office.** 28. Notice of the situation of such office, and of any change therein, shall be given in some newspaper published in this Island. Until such notice is given, the company shall not be deemed to have complied with the provisions of this Act with respect to having an office.

Imp. § 62.

**Publication of name by limited company.** 29. Every limited company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible; and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company; and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods, purporting to be signed by or on behalf of such company; and in all bills of parcels, invoices, receipts, and letters of credit of the company.

Imp. § 63.

**Penalties for non-publication of name.** 30. If any limited company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding one pound for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall be liable to the like penalty; and if any director, manager, or officer of such company, or any person on its behalf, uses or authorizes the use of any seal, purporting to be a seal of the company, whereon its name is not so engraven as aforesaid; or issues or authorizes the issue of any notice, advertisement, or other official publication of such company; or signs, or authorizes to be signed, on behalf of such company, any bill of exchange, promissory note, endorsement, cheque, order for money, or goods; or issues, or authorizes to be issued, any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Imp. § 63.

**Register of mortgages.** 31. Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting property of the company and shall enter in such register, in respect of each mortgage or charge, a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge. If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding fifty pounds. The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and, if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues.

Imp. §§ 100, 101.



**Certain companies to make periodical statement.** 32. Every limited banking company, and every insurance company, and deposit, provident, or benefit society under this Act, shall, before it commences business, and also on the first Monday in February, and the first Monday in August, in every year during which it carries on business, make a statement in the form marked A in the Schedule hereto, or as near thereto as circumstances will admit; and a copy of such statement shall be put up in a conspicuous place in the office of the company, and in every branch office or place where the business of the company is carried on; and, if default is made in compliance with the provisions of this section, the company shall be liable to a penalty not exceeding five pounds for every day during which such default continues; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 108.

**Register of names, etc., of directors.** 33. Every company under this Act and not having a capital divided into shares shall keep at its office a register containing the names and addresses and the occupations of its directors or managers.

Imp. § 75.

**Penalty for not keeping register of directors.** 34. If any company under this Act, and not having a capital divided into shares, makes default in keeping a register of its directors or managers, such delinquent company shall incur a penalty not exceeding one pound for every day during which such default continues; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 75.

**Bills and notes.** 35. A promissory note or bill of exchange shall be deemed to have been made, accepted, or endorsed on behalf of any company under this Act, if made, accepted, or endorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or endorsed by or on behalf or on account of the company by any person acting under the authority of the company.

Imp. § 77.

**Prohibition against carrying on business with less than seven members.** 36. If any company under this Act carries on business, when the number of its members is less than seven, for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same without the joinder in the action or suit of any other member.

Imp. § 115.

**General meeting.** 37. A general meeting of every company under this Act shall be held once at the least in every year.

Imp. § 64.

**Power to alter regulations by special resolution.** 38. Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any company formed under this Act may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association, or make new regulations to the exclusion of, or in addition to, all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Imp. § 13.

**Definition of special resolution.** 39. A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote, as may be present in person or by proxy (in cases where by the regulations of the company proxies are allowed) at any general meeting of which notice, specifying the intention to propose such resolution, has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations

of the company, to vote, as may be present in person or by proxy at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first passed. At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour or against the same. Notice of any meeting shall, for the purposes of this section, be deemed to be duly given, and the meeting duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company. In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

Imp. § 69.

**Provision as to voting and meeting. 40.** In default of any regulations as to voting, every member shall have one vote; and, in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member; and, in default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same; and, in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Imp. § 67.

**Recording of special resolutions, etc. 41.** A copy of any special resolution that is passed by any company under this Act shall be recorded in the office of the Island Secretary. If such copy is not so recorded within thirty days from the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such thirty days during which such copy is omitted to be recorded; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 70.

**Copies of special resolutions. 42.** Where articles of association have been recorded, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution; and if any company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 70.

**Execution of deeds abroad. 43.** Any company under this Act may, by instrument in writing under its common seal, empower any person, either generally, or in respect of any specified matter, as its attorney, to execute deeds on its behalf in any place out of this Island; and every deed signed by such attorney on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

Imp. § 78.

**Service on company. 44.** Any summons, notice, order, or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company, at their office.

Imp. § 116.

**Service by post. 45.** Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and, in proving service of such document, it shall be sufficient to prove that such document was properly directed, and put as a prepaid letter into the post office.

**Authentication of acts of company. 46.** Any summons, notice, order, or proceeding requiring authentication by the company may be signed by any director, secretary or other authorized officer of the company, and need not be under the common seal of the company; and the same may be in writing or print, or partly in writing and partly in print.

Imp. § 285.



**Recovery of penalties. 47.** All penalties and forfeitures imposed by this Act shall be recovered in a summary manner before any two justices of the parish wherein the offence was committed, and may be proceeded for and recovered or enforced in the like manner, and with the like powers, as are or shall be prescribed or given by the Act of the thirteenth Victoria, chapter thirty-five, or any other Act now or hereafter to be in force in respect to summary proceedings.

Imp. § 276.

**Application thereof. 48.** The justices imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information, or at whose suit, such penalty has been recovered; and, subject to such direction, all penalties shall be paid into the Receiver-General's office to the credit of this Island.

Imp. § 277.

**Minutes of proceedings to be kept in book. 49.** Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company, in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed, or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and, until the contrary is proved, every general meeting of the company, or meeting of the directors or managers, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened; and all resolutions passed thereat, or proceedings had, to have been duly passed and had; and all appointments of directors, managers, or liquidators shall be deemed to be valid; and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

Imp. § 71.

**Certain companies to give security for costs. 50.** Where a limited company is plaintiff or pursuer in any action, suit, or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that, if the defendant be successful in his defence, the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Imp. § 278.

**Action by company against member. 51.** In any action or suit brought by the company against any member to recover any call or other moneys due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made, or other moneys due, whereby an action or suit hath accrued to the company.

#### *Schedule.*

##### **Form A.**

The capital of the company is divided into	shares, of	each.
The number of shares issued is	Calls to the amount of	pounds per
share have been made, under which the sum of	pounds has been received.	
The liabilities of the company on the first day of January (or July) were		
Debts owing to sundry persons by the company:		
On judgment, £		
On specialty, £		
On notes or bills, £		
On simple contracts, £		
On estimated liabilities, £		
The assets of the company on that day were:		
Government or island securities (stating them), £		
Bills of exchange and promissory notes, £		
Cash, £		
Other securities, £		

\*) If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

**b) 28 Vic. c. 42. An Act for the Winding-up of Companies (1865).***Preliminary.*

**"Contributory" defined.** 1. The term "contributory" shall mean every person liable to contribute to the assets of a company in the event of the same being wound up. It shall also, in all proceedings for determining the persons who are to be deemed contributory<sup>1)</sup>, and in all proceedings prior to the final determination of such persons, include any person alleged to be contributory.

Imp. § 124.

**Nature of liability of contributory.** 2. The liability of a contributory in the event of a company being wound up shall be deemed to create a debt in the nature of a specialty accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls shall have been or shall be made for enforcing such liability. Provided, that nothing herein contained shall increase the liability of any shareholder, co-partner, or contributory of any public company beyond his original liability.

Imp. § 127.

**Contributory becoming bankrupt.** 3. In case of the insolvency or bankruptcy of any contributory, it shall be lawful to prove against his estate the estimated value or<sup>2)</sup> his or her liability to future calls, as well as calls already made; and the official assignee, or other the assignees of such contributory, shall in case of such insolvency or bankruptcy, be deemed to represent him, and may be called upon to admit the proof against his estate, or otherwise to allow to be paid out of the assets, in due course of law, such sum as shall be due from such insolvent or bankrupt in respect of his liability to contribute to the assets of the company being wound up.

Imp. § 127.

**Contributories in case of death or marriage.** 4. In case of the death of any contributory, his personal representatives, heirs, and devisee, in a due course of administration, and, in case of the marriage of a female contributory, her husband during the continuance of the marriage, in the same sum as she would have been liable had she not married, shall be liable to contribute to the assets of the company, and be deemed contributories accordingly.

Imp. § 126.

**Time of insolvency.** 5. It is immaterial whether the insolvency of such contributory shall have happened or shall happen before he or she has been placed on the list of contributories as hereinafter mentioned.

Imp. § 126.

*Winding-up.*

**Circumstances under which company may be wound up.** 6. A company may be wound up as hereinafter defined under the following circumstances: First. Whenever the company has passed a special resolution requiring the company to be wound up. Second. Whenever the company shall not commence its business within a year from its incorporation or registration or shall suspend its business for the space of one year. Third. Whenever the members are reduced in number to less than seven. Fourth. Whenever the company is unable to pay its debts. Fifth. Whenever the Court is of opinion that it is just and equitable that the company should be wound up.

Imp. § 129.

**When company shall be deemed unable to pay its debts.** 7. A company under this Act shall be deemed unable to pay its debts: First. Whenever a creditor, by assignment or otherwise, to whom the company is indebted at law or in equity in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at the registered or head office, a demand, under his hand, requiring the company to pay the sum due, and the company has, for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure a<sup>3)</sup> compound for the same, to the reasonable satisfaction of the creditors. Second. Whenever execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor at law or in equity, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part. Third. When-

1) *S c.* 2) *Sic*; obviously "of." — 3) *Sic*.



ever it is proved, to the satisfaction of the Court that the company is unable to pay its debts.

Imp. § 130.

**Supreme Court to administer Act.** 8. The Judges of the Supreme Court, with the powers of the Court of Equity, shall be the judges to administer this Act; and the term "Court," throughout this Act, shall mean Supreme Court of Judicature of this Island; and any Judge of the Supreme Court may do in chambers any act which the Court is hereby authorized to do.

Imp. § 134.

**Application for winding-up to be by petition.** 9. Any application to the Court for winding up of a company under this Act shall be by petition. It may be presented by the company, or by any one or more creditor or creditors, or by any one or more contributory or contributories to the company, or by all or any of the above parties together or separately; and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company, in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Imp. § 137.

**Commencement of winding-up.** 10. A winding-up of a company shall be deemed to commence at the time of the presentation of the petition for the winding-up.

**Staying of actions.** 11. The Court may, at any time after the presentation of a petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings on any action, suit, or proceeding against the company, upon such terms as the Court thinks fit.

Imp. § 139.

**Hearing of petition.** 12. Upon hearing the petition, the Court may dismiss the same with or without costs, and adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just.

Imp. § 141.

**Actions and suits stayed upon order for winding up.** 13. When an order has been made for winding up a company under this Act, no suit, action, or other proceeding shall be proceeded with or commenced against the company, except with the leave of the Court, and subject to such terms as the Court may impose.

Imp. § 142.

**Court may stay proceedings after winding-up order.** 14. The Court may, at any time after an order has been made for winding up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms, and subject to such conditions, as it deems fit.

Imp. § 144.

**Winding-up of company limited by guarantee.** 15. When an order has been made for winding up a company limited by guarantee, and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt (of the nature of a specialty) due to the company from each member, to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

Imp. § 123.

**Court to have regard to wishes of creditors and contributories.** 16. The Court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence; and may, if it thinks it expedient, direct meetings of the creditors or contributories, to be summoned held and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court; in the case of creditors regard is to be had to the value of the debts due to each creditor; and in the case of contributories, to the number of votes conferred on each contributory by the regulation of the company.

Imp. § 145.

#### *Liquidators.*

**Appointment of liquidators.** 17. For the purpose of conducting the proceedings in winding up a company, and assisting the Court therein, there may, upon or after

any petition has been filed for winding up a company, be appointed a person or persons, to be the liquidator or liquidators of the particular company; and the Court may appoint such person or persons, either provisionally or otherwise, as it thinks fit. In all cases, if more persons than one are appointed liquidators, the Court shall declare whether any act hereby required or authorized to be done by the liquidators is to be done by all, or any one or more of such liquidators. The Court may also determine whether any and what security is to be given by any liquidator on his appointment. If no liquidator is appointed, or, during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court.

**Imp. § 149.**

**Resignation, removal, remuneration. 18.** Any liquidator may resign, or be removed by the Court on due cause shewn; and any vacancy in the office of liquidator shall be filled by the Court. There shall be paid to the liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed among them in such proportions as the Court directs.

**Imp. § 149.**

**How liquidator to be described, and what duties he is to perform. 19.** The liquidator or liquidators shall be described by his name, and the style of the liquidator or liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names alone. He or they shall take into his or their custody, or under his or their control, all the property, effects, and things in action to which the company is or appear<sup>1)</sup> to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the Court.

**Imp. § 149.**

**Powers of liquidator. 20.** The liquidator shall have power, with the sanction of the Court, to do the following things: To bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, on behalf of the company, and which may be brought or defended by him in his name and style of office. To carry on the business of the company, as far as may be necessary for the beneficial winding-up of the same. To sell the real and personal and moveable property, effects, and things in action of the company, by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels. To do all acts, and to execute, in his name and style of office on behalf of and for the company, all deeds, receipts, and other documents, and for that purpose to use when necessary the company's seal. To prove rank, claim, and draw a dividend in the matter of the insolvency or bankruptcy of any contributory against the estate of such contributory. To take out, if necessary, in his name and style of office, letters of administration to any deceased contributory, and to do any other act that may be necessary for obtaining payment of any moneys due from such contributory or his estate. To do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

**Imp. § 151.**

**Exercise of powers. 21.** The Court may provide, by any order, that the liquidator may exercise any of the above powers without the sanction or intervention of the Court.

**Imp. § 151.**

**Appointment of solicitor. 22.** The liquidator may, with the sanction of the Court, appoint a solicitor to assist him in the performance of his duties.

**Imp. § 151.**

#### *Ordinary powers of the Court.*

**List of contributories and collection and application of assets. 23.** As soon as may be after the making of any order for winding up a company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

**Imp. § 163.**

**Provision as to representative contributories. 24.** In settling the list of contributories, the Court shall distinguish between persons who are contributories in their

<sup>1)</sup> *Sic*; obviously "appears."



own right, and persons who are contributories by their being representatives of, or being liable to, the debts of others. It shall not be necessary, when the personal representative is on the list, to add the heirs or devisees of such contributory, but they may be added, if the Court think it necessary.

Imp. § 163.

**No person to be made contributory without notice.** 25. No person shall be made a contributory unless notice in writing be given or sent to him, or, in case of his absence to his attorney or agent in this Island, to shew cause against his being settled as a contributory on the list of contributories, at least fourteen days before such list is settled.

**Service of notices on absentees, etc.** 26. The Court shall have full power to direct in what manner service of notices and other proceedings shall be effected in cases where the parties to be served are absentees from this Island and unrepresented or cannot be found after reasonable enquiry.

**Power of Court to require delivery up of property.** 27. The Court may at any time after making any order for winding up a company require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the liquidator, any sum or balance, books, papers, estate, or assets which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

Imp. § 164.

**Moneys due to company by contributory.** 28. The Court may at any time after making an order for winding up the company make an order on any contributory settled on the list of contributories, directing payments to be made, in manner in the said order mentioned, of any moneys due from him, or from the estate of the person whom he represents, to the company, exclusive of any money which he, or the estate of the person whom he represents, may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Act; and it may, in making such order, when the company is not limited, allow to such contributory, by way of set-off, any moneys due to him or the estate which he represents, from the company, on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit: Provided, that when all the creditors of any company, whether limited or unlimited, are paid in full, any moneys due on any account whatsoever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls.

Imp. § 165.

**Power of Court to make calls.** 29. The Court may, at any time after making an order for winding up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls, and make order for payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of the liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories among themselves; and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Imp. § 166.

**Payment to Receiver-General.** 30. The Court may order any contributory, purchaser, or other person from whom money is due to the company, to pay the same into the office of the Receiver-General of this Island to the account of the liquidator, and such order may be enforced as if it had directed payment to the liquidator.

Imp. § 167.

**On default of payment by contributory, execution may issue as under 8 Vic. c. 48.** 31. If any person made a contributory, either in his own right, or as personal representative of a deceased contributory, makes default in paying the sum ordered to be paid by him, execution may issue upon such order as upon an order made in pursuance of the act eighth Victoria, chapter forty-eight, against such contributory, or the assets of the deceased contributory; and if such execution in the case of a deceased contributory shall not be effectual, proceedings may, with the sanction of the Court, be taken in the Court of Chancery of this Island for administering the

personal and real estate of such deceased contributory, and of compelling payment thereof of the money due.

**Order conclusive evidence that moneys are due.** 32. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due, or ordered to be paid, are due; and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be prima facie evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

Imp. § 168.

**Court may fix a day for creditors to prove their debts.** 33. The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Imp. § 169.

**Rights of contributories inter se.** 34. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Imp. § 170.

**Costs of winding-up.** 35. The Court may in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment, out of the assets of the company, of the costs, charges, and expenses incurred in winding up any company, in such order of priority as the Court thinks just.

Imp. § 171.

**Dissolution of company.** 36. When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

Imp. § 172.

#### *Extraordinary powers of the Court.*

**Power of Court to summon certain persons before it.** 37. The Court may, after it has made an order for the winding-up of the company, summon before it any officer of the company, or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company; and the Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination. Nevertheless, in cases where any person claims any lien on papers, deeds, or writings, or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction, in the winding-up, to determine all questions relating to lien. Provided, that no person shall be entitled to have or claim any lien on the books or accounts of the company.

Imp. § 174.

**Examination of parties brought before Court.** 38. The Court may examine, upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Imp. § 174.

**Power to arrest contributory about to abscond, etc.** 39. The Court may, at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the Island, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contri-



butory to be arrēsted, and his books, papers, moneys, securities for moneys, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

Imp. § 176.

**Powers of Court cumulative. 40.** Any powers by this Act conferred upon the Court shall be deemed to be in addition to, and not restrictive of, any other powers subsisting at law or in equity of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company, for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

Imp. § 177.

*Enforcement and appeal from orders.*

**Enforcements of orders. 41.** All orders made by the Court under this Act may be enforced in the same manner in which orders of the Supreme Court or Court of Chancery made in any proceeding or suit before them may be enforced; and for the purposes of this Act the Court shall, in addition to the ordinary powers of the Supreme Court, have the same powers for enforcing any orders made by it as the Court of Chancery in relation to matters within the jurisdiction of such Court.

Imp. § 178.

**Appeals from single Judge to Court. 42.** Appeals from any order or decision made or given in the matter of the winding-up of a company before any single Judge may be made to the Supreme Court, sitting in banco, in the same manner, and subject to the same rules and conditions, as are required in cases of new trials in matters within the ordinary jurisdiction of the Supreme Court.

Imp. § 181.

*Powers of Court to make rules.*

**Power to make rules. 43.** The Supreme Court of Judicature may, as often as circumstances require, make such rules concerning the mode of proceeding to be had for winding up a company as may from time to time seem necessary; but until such rules shall be made, the Court or Judge acting in the matter may, by the order made upon the petition, or upon summary application afterwards, give such directions, not inconsistent with this Act, for carrying out the provisions thereof in respect of the particular company being or being sought to be wound up, (as the said Court or Judge shall think fit<sup>1</sup>).

Imp. § 237.

*Supplementary provisions.*

**Disposition of property after commencement of winding up void. 44.** When any company is being wound up under this Act, all dispositions of the property, effects, and things in action of the company, and every transfer of shares or alteration of the status of the members of the company, made between the commencement of the winding-up and the order for winding-up shall, unless the Court otherwise orders, be void.

**Company's books to be prima facie evidence. 45.** When any company is being wound up, all books, accounts, and documents of the company, and of the liquidator, shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

Imp. § 220.

**Inspection of books. 46.** When an order has been made for winding up a company, the Court may make such order for the inspection, by the creditors and contributories of the company, of its books and papers, as the Court thinks just; and any books and papers in possession of the company may be inspected by creditors or contributories in conformity with the order of the Court but not further or otherwise.

Imp. § 221.

**Assignee of things in action. 47.** Any person to whom anything in action belonging to the company is assigned in pursuance of this Act may bring or defend any action or suit relating to such thing in action in his own name.

**Debts of all descriptions may be proved against company. 48.** In the event of any company being wound up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible in proof against the company,

<sup>1</sup>) Words in brackets not in original.

a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency, or sound only in damages, or for some other reason do not bear a certain value.

Imp. § 206.

**Liquidation. 49.** The liquidator may, with the sanction of the Court, pay any classes of creditors in full, or make such compromise or other arrangement, as the liquidator may deem expedient, with creditors, or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable.

Imp. § 214.

**Power to compromise. 50.** The liquidator may, with the sanction of the Court, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist, between the company and any contributory or alleged contributory, or other debtor, or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company, or the winding-up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms, as may be agreed upon, with power for the liquidator to take any security for the discharge of such debts or liabilities and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Imp. § 214.

**Process against effects of company during winding-up void. 51.** When the company is being wound up, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents.

Imp. § 211.

**Fraudulent preference. 52.** Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property, as would, if made or done by or against an individual, be deemed in the event of his insolvency, to have been made or done by way of undue or fraudulent preference of the creditors of such individual, shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly; and, for the purposes of this Act, the presentation of a petition for winding up a company shall be deemed to correspond with the act of insolvency in the case of an individual.

Imp. § 210.

**Misappropriation of funds by director or other officer. 53.** When, in the course of the winding-up of any company under this Act, it appears that any past or present director, manager, or any officer of such company, or any liquidator appointed under this Act, has misapplied, or retained in his own hands, or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, or liquidator, and compel him to repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest, after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company, by way of compensation, in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

Imp. § 215.

**Destroying or falsifying books. 54.** If any director, officer, or contributory of any company wound up under this Act, destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes, or is privy to the making of, any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall be deemed guilty of a misdemeanour, and, upon being convicted, shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Imp. § 216.



**Prosecution of delinquent directors or officers. 55.** When any order is made for winding up a company, if it appear in the course of such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may on the application of any person interested in such winding-up, or of its own motion, direct the liquidator or liquidators to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

Imp. § 217.

**False swearing. 56.** If any person, upon any examination upon oath or affirmation authorized under this Act, or in any affidavit, deposition, or solemn affirmation, in or about the winding-up of any company under this Act, or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

Imp. § 218.

#### *Application of this Act.*

**Application of Act. 57.** This Act shall apply to all companies incorporated under any Act of the legislature of this Island; all partnerships as bankers under any Act of this Island, authorized to sue by their public officer otherwise; all mining and cost book companies established under any Act of this Island, and all other companies whatsoever, limited or otherwise, which shall derive their powers under any Act of this Island, whether such corporations, partnerships, or companies have been or shall be appointed, formed, or established under any present or future Act of this Island, save where such corporations, partnerships, or companies previously derived their powers under any statute of the United Kingdom.

### **c) No. 34 of 1906. A Law to amend the Act, 27 Vic., Session 2, Chap. 4, entitled An Act for the Incorporation and Regulation of Trading Companies and other Associations (23d June, 1906).**

**Short title. 1.** This Law may be cited for all purposes as *The Companies Law, 1906*.

[2—3. Amend 27 Vic. Sess. II, c. 4, §§ 7, 12, and are there incorporated.]

**Notice of consolidation and division or conversion of shares into stock. 4.** Every company under the Principal Act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the Deputy Keeper of the Records of such consolidation, division, or conversion, specifying the shares so consolidated, divided, or converted.

Imp. § 44.

**Changes consequent on conversion of capital into stock. Trusts. 5.** Where any company under the Principal Act, having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the Deputy Keeper of the Records, all the provisions of this Act which are applicable to shares only, shall cease as to so much of the capital as is converted into stock; and the register of members required to be kept by the company, and the list of members to be forwarded to the Deputy Keeper of the Records, shall show the amount of stock held by each member in the list, instead of the amount of shares and the particulars relating to shares hereinbefore required. No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable for the purposes of this Law by the Deputy Keeper of Records, in the case of companies under the Principal Act.

Imp. §§ 27, 43.

**Capital. Power to reduce to include lost or unrepresented capital. 6.** The word "capital", as used in the Principal Act, shall include paid-up capital; and the power to reduce capital hereinafter given, shall include a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced, either with or without extinguishing or reducing the liability (if any) remaining

on the shares of the company, and to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved, notwithstanding anything contained in the Principal Act.

*Modification of memorandum.*

**Where company limited by shares has converted shares into stock.** 7. Every company limited by shares, and which has converted any portion of its shares into stock, may so far modify the conditions in its memorandum of association, if authorized to do so by its articles as originally framed, or as altered by special resolution in manner herein provided, as to reconvert such stock into paid-up shares of any denomination.

*Imp. § 41.*

**Reduction of capital where shares not taken, or agreed to be taken.** 8. Any company limited by shares, may so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of the passing of such resolution, have not been taken or agreed to be taken by any person; and the provisions hereinafter appearing, shall not apply to any such reduction of capital made in pursuance of this section.

*Imp. § 41.*

**Reduction of capital generally. Order of Supreme Court thereon.** 9. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the Supreme Court is registered by the Deputy Keeper of the Records as is hereinafter mentioned.

*Imp. §§ 46, 47.*

**Addition of words "and reduced" to name of company.** 10. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name until such date as the Court may fix, the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company within the meaning of the Principal Act.

*Imp. § 48.*

**Petition to Supreme Court, and order thereon confirming reduction of capital.**

11. A company which has passed a special resolution for reducing its capital, may apply to the Court by petition for an order confirming the reduction, and on the hearing of the petition, the Court, if satisfied that with respect to every creditor of the company who, under the provisions of this Law, is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has been determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms, and subject to such conditions as it deems fit.

*Imp. § 47.*

**Right of creditors to object to reduction.** 12. Where a company proposes to reduce its capital, every creditor of the company who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object. The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors, and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company, who are not entered on the list, are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction.

*Imp. § 49.*

**Court may dispense with consent of creditor, on company securing his debt.**

13. Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it think fit) dispense with such consent, on the company securing the payment of the debt or claim of such creditor, by setting apart and appropriating in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned, that is to say: 1. If the full amount of the debt or claim of



the creditor is admitted by the company, or though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated. 2. If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such that the company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it think fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

**Imp. § 49.**

**Rights of creditors where reduction does not involve diminution of liability of shareholders, or repayment of paid-up capital. Publication of reasons for reducing capital. 14.** Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital: 1. The creditors of the company shall not, unless the Court otherwise direct, be entitled to object or required to consent to the reduction, and 2. It shall not be necessary before the presentation of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced," as mentioned in section 10 hereof. In any case that the Court thinks fit so to do, it may require the company to publish, in such manner as it thinks fit, the reasons for the reduction of its capital, with a view to give proper information to the public in relation to the reduction of its capital by the company, and if the Court thinks fit, the causes which led to such reduction.

**Imp. § 48.**

**Registration of order, etc., confirming special resolution. Notice of registration. Certificate of registration of order of Court, etc. 15.** The Deputy Keeper of the Records, upon the production to him of an order of the Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order, and of a minute approved by the Court, showing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares in which it is to be divided, the amount of each share, and the amount to be deemed at the date of registration of said minute to have been paid up on each share, shall register the order and minute; and, on the registration, the special resolution confirmed by the order so registered shall take effect. Notice of such registration shall be published in such manner as the Court may direct. The Deputy Keeper of the Records shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Law with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

**Imp. § 51.**

**Effect of minute of the Court when registered. 16.** The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association; and, subject as in this Law mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share, and the amount of the share as fixed by the minute.

**Imp. § 51.**

**Rights of creditors not entered on list in consequence of ignorance. 17.** If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this law is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of the seventh section of the Act 28 Victoria, Chapter 42, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute, relating to the reduction of the capital of the company, shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to

be wound up on the day prior to such registration: and on the company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list, in the same manner in all respects, as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

**Minute of Court to be embodied in every copy of memorandum of association. Penalty.** 18. A minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section, it shall incur a penalty, not exceeding one pound, for each copy in respect of which such default is made, and every director and manager of the company, who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 52.

**Director, etc., wilfully concealing name or misrepresenting nature or amount of creditor's claim guilty of misdemeanour.** 19. If any director, manager, or officer of the company, wilfully conceals the name of any creditor of the company, who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company; or, if any director or manager of the company aids or abets in, or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanour.

Imp. § 54.

#### *Subdivision of shares.*

**Division of capital into shares of smaller amount.** 20. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as by subdivision of its existing shares, or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association. Provided, that in the subdivision of the existing shares, the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount, shall be the same as it was in the case of the existing share or shares, from which the share of reduced amount is derived.

Imp. § 41.

**Statement of number of shares in copies of memorandum issued after subdivision. Penalties.** 21. The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section, shall incur a penalty not exceeding one pound, for each copy in respect of which such default is made, and every director and manager of the company, who knowingly or wilfully authorizes or permits such defaults, shall incur the like penalty.

Imp. § 41.

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d) No. 35 of 1906. A Law in Aid of the Act 27 Vic. Session 2, Chap. 4, entitled An Act for the Incorporation and Regulation of Trading Companies and other Associations, and of the Act 28 Vic., Chapt. 42, entitled An Act for the Winding-up of Companies (23d June, 1906).

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**Incorporation and short title of Acts.** 1. This law shall be read and construed as if it formed part of "An Act for the Incorporation and Regulation of Trading companies and other associations, (27 Victoria, session 2, chapter 4)" hereinafter called *The Companies Act* and of "An Act for the Winding up of Companies," (28 Victoria, chapter 42) hereinafter called the *The Winding-up Act*.



**Voluntary winding-up of companies.** 2. A company under the *Companies Act* may be wound up voluntarily: 1. Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; 2. Whenever the company has passed a special resolution requiring the company to be wound up voluntarily; 3. Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same. For the purposes of this Law, any resolution shall be deemed to be extraordinary, which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution, as by the *Companies Act* defined.

Imp. § 162.

**Commencement of voluntary winding-up.** 3. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up.

Imp. § 163.

**Cessation of business of company.** 4. Whenever a company is wound up voluntarily, the company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding-up, shall be void; but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.

Imp. § 164.

**Publication of resolution for winding-up.** 5. Notice of any special resolution, or extraordinary resolution, passed for winding up a company voluntarily, shall be given by advertisement in *The Jamaica Gazette*.

Imp. § 185.

**Consequences ensuing upon voluntary winding-up.** 6. The following consequences shall ensue upon the voluntary winding-up of a company: 1. The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company; 2. Liquidators shall be appointed for the purpose of winding-up the affairs of the company and distributing the property; 3. The company in general meeting shall appoint such persons or person as it thinks fit, to be liquidators or liquidator, and may fix the remuneration to be paid to them or him; 4. If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him; 5. Upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the company in general meeting, or the liquidators, may sanction the continuance of such powers; 6. When several liquidators are appointed, every power hereby given may be exercised by such one or more of them, as may be determined at the time of their appointment, or in default of such determination by any number not less than two; 7. The liquidators may, without the sanction of the Court, exercise all powers by *The Winding-up Act* given to the official liquidator; 8. The liquidators may exercise the powers by *The Winding-up Act* given to the Court of settling the list of contributories of the company, and any list so settled, shall be *prima facie* evidence of the liability of the persons named therein to be contributories; 9. The liquidators may, at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made, may partly or wholly fail to pay their respective portions of

the same: 10. The liquidators shall pay the debts of the company, and adjust the rights of the contributories amongst themselves.

Imp. § 186.

**Un-called share capital of company limited by guarantee to be assets.** 7. Where a company limited by guarantee, and having a capital divided into shares, is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company, to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

**Delegation by company of power to appoint liquidators.** 8. A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may, by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised; and any act done by the creditors, in pursuance of such delegated power, shall have the same effects as if it had been done by the company.

Imp. § 190.

**Arrangement between company and its creditors binding subject to right of appeal.** 9. Any arrangement entered into between a company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the company, if sanctioned by an extraordinary resolution, and on the creditors, if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Imp. § 191.

**Right of appeal to Court.** 10. Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors, may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Imp. § 191.

**Right to apply to the Court.** 11. Where a company is being wound up voluntarily, the liquidators, or any contributory, or any creditor of the company, may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court: and the Court, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

Imp. § 193.

**General meetings of company being wound up to be summoned by liquidators.** 12. Where a company is being wound up voluntarily, the liquidators may, from time to time, during the continuance of such winding-up, summon general meetings of the company, for the purpose of obtaining the sanction of the company by special resolution, or extraordinary resolution, or for any other purposes they think fit; and, in the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year, from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings and the manner in which the winding-up has been conducted during the preceding year.

Imp. § 194.

**Power to fill vacancy in office of liquidator.** 13. If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation, or otherwise, the company in the general meeting, may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held, if held in manner prescribed by the regulations of the company, or in



such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the Court.

Imp. § 189.

**Power of the Court to appoint and remove liquidators.** 14. If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator, or liquidators; the Court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up.

Imp. § 186.

**Meeting of company to be called by liquidators when company fully wound up.**

15. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account, showing the manner in which such winding-up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company, for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators; the meeting shall be called by advertisement, specifying the time, place, and object of such meeting; and such advertisement shall be published one month, at least, previously to the meeting, in *The Jamaica Gazette*.

Imp. § 195.

**Return to be made to Deputy Keeper of the Records. Penalty for default.** 16. The liquidators shall make a return to the Deputy Keeper of the Records of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return, the company shall be deemed to be dissolved; if the liquidators make default in making such return to the Deputy Keeper of the Records, they shall incur a penalty not exceeding five pounds, for every day during which such default continues, to be recoverable summarily before two justices of the peace.

Imp. § 195.

**Costs of winding-up and remuneration of liquidators.** 17. All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

Imp. § 196.

**Voluntary winding-up, not to bar right to have company wound up by the Court.**

18. The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Imp. § 197.

**Adoption by the Court of proceedings taken in voluntary winding-up.** 19. Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in such order, or in any other order, for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Imp. § 198.

**Criminal prosecution of director, etc., by liquidators.** 20. Where a company is being wound up altogether voluntarily, if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer, or member of such company, has been guilty of any offence in relation to the company, for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the Court, to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company, in priority to all other liabilities.

Imp. § 217.

**Mode of application to the Court.** 21. Every application under the tenth, eleventh, or fourteenth section of this Law, shall be made by petition or motion, or, if the Judge shall so direct, by summons at chambers; and every application under the fifty-fifth section of *The Winding-up Act*, or the nineteenth section of this Law, shall be made by petition.

*Winding-up subject to the supervision of the Court.*

**Order that may be made by the Court.** 22. When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that

the voluntary winding-up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others, to apply to the Court, and generally, upon such terms and subject to such conditions as the Court thinks just.

Imp. § 199.

**Petition for winding-up. 23.** A petition praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the Court, which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding-up the company by the Court.

Imp. § 200.

**Matters to be regarded by the Court in determining whether a winding-up shall be by the Court, or subject to its supervision. 24.** The Court may, in determining whether a company is to be wound up altogether by the Court, or subject to the supervision of the Court, in the appointment of liquidator or liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court; in the case of creditors, regard shall be had to the value of the debts due to each creditor, and in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company.

Imp. § 201.

**Power of Court to appoint additional liquidators. 25.** Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators, and any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if they had been appointed by the company; the Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Imp. § 202.

**Powers of liquidators appointed to conduct winding-up subject to the supervision of the Court. 26.** Where an order is made for a winding-up subject to the supervision of the Court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all their powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily; but, save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court, shall for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised, if an order had been made for winding up the company altogether by the Court, and in the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidators" shall be deemed to mean liquidators conducting the winding-up subject to the supervision of the Court.

Imp. § 203.

**Appointment of liquidators where order for liquidation subject to supervision is superseded. 27.** Where an order has been made for the winding-up of a company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the Court may, in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators, or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidator.

Imp. § 204.

#### *Supplemental.*

**Evidence. 28.** Where a company is being wound up, all books, accounts, and records of the company, and of the liquidators shall, as between the contributories



of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

Imp. § 220.

**Voluntary winding-up where business or property to be transferred to another company.** 29. Where any company is proposed to be, or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first-mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale, shares, policies, or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from, the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section, shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up, who has not voted in favour of the special resolution passed by the company of which he is a member, at either of the meetings for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators, or one of them, and left at the registered office of the company, not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things, as the liquidators may prefer; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution; no special resolution shall be deemed invalid for the purpose of this section, by reason that it has passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but, if an order be made within a year for winding up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

Imp. § 192.

**Purchase of interest of dissentient member.** 30. The price to be paid for the purchase of the interest of any dissentient member, may be determined by agreement or by arbitration.

Imp. § 192.

#### *Defunct companies.*

**Duties and powers of Deputy Keeper of the Records.** 31. 1. Where the Deputy Keeper of the Records has reasonable cause to believe that a company, whether registered before or after the passing of this Law, is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation. 2. If the Deputy Keeper of the Records does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiration of one month, send to the company by post, a registered letter referring to the first letter, and stating that no answer has been received by the Deputy Keeper of the Records, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in *The Jamaica Gazette* with a view to striking the name of the company off the register. 3. If the Deputy Keeper of the Records either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer thereto, the Deputy Keeper of the Records may publish in *The Jamaica Gazette* and send to the company a notice that at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register, and the company will be dissolved. 4. At the expiration of the time mentioned in the notice the Deputy Keeper of the Records may, unless cause to the contrary be previously shown by such company, strike the name of such company off the register, and shall publish notice

thereof in *The Jamaica Gazette*, and on the publication in *The Jamaica Gazette*, of such last mentioned notice, the company whose name is so struck off shall be dissolved: Provided, that the liability (if any) of every director, managing officer, and member of the company shall continue, and may be enforced, as if the company had not been dissolved. 5. If any company, or member, or creditor thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company, or member, or creditor may apply to the Supreme Court in which the company is liable to be wound up; and such Court, if satisfied that the company was at the time of the striking off carrying on business, or in operation, or otherwise that it is just so to do, may order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had never been struck off. 6. A letter or notice authorized or required for the purposes of this section to be sent to a company, may be sent by post addressed to the company at its registered office, or, if no office has been registered, addressed to the care of some director or officer of the company, or, if there be no director or officer of the company whose name and address are known, to the Deputy Keeper of Records, the letter or notice (an identical form) may be sent to each of the persons who subscribed the memorandum of the association, addressed to him at the address mentioned in that memorandum. 7. In the execution of his duties under this section, the Deputy Keeper of the Records shall conform to such regulations as may from time to time be made by the Keeper of the Records.

Imp. § 242.

**Power of Deputy Keeper of Records when company being wound up and no liquidator is acting, etc.** 32. Where a company is being wound up, and the Deputy Keeper of the Records has reasonable cause to believe that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the Deputy Keeper of the Records demanding the returns has been sent by post to the registered address of the company, or to the liquidator at his last known place of business, the provisions of the last preceding section shall apply, in like manner as if the Deputy Keeper of the Records had not, within one month after sending the second letter therein mentioned, received any answer thereto.

**Companies to which this Law applies.** 33. This Law shall, except as otherwise expressed, apply to every company, whether formed before or after the commencement of this Law.

## e) No. 36 of 1906. A Law to facilitate Compromises and Arrangements between Creditors and Shareholders of Companies in Liquidation. (23d June, 1906).

**Short title.** 1. This law may be cited as *The Companies Arrangement Law, 1906*.

**Power of Court on summary application to sanction arrangement or compromise.**

2. Where any compromise or arrangement shall be proposed between a company which is, at the time of the passing of this Law or afterwards, in the course of being wound up, either voluntarily, or by or under the supervision of the Court, and the creditors of such company, or any class of such creditors, and the company and the members or any class thereof, it shall be lawful for the Court, in addition to any of its powers, on the application in a summary way of any creditor, member, or the liquidator, to order that a meeting of such creditors or class of creditors, or of such members or class of members, shall be summoned in such manner as the Court shall direct; and, if a majority in number representing three-fourths in value of such creditors or class of creditors, or of such members or class of members present, either in person or by proxy at such meeting, shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, and members and class of members, as the case may be, and also on the liquidator and contributories of the said company.

Imp. §§ 120, 191.



**Meaning of "company" in this Law.** 3. The word "company" in this Law shall mean any company liable to be wound up, under the Act, 27 Victoria, session 2, chapter 4, entitled "An Act for the Incorporation and Regulation of Trading Companies and other Associations," and the Act, 28 Victoria, chapter 42, entitled "An Act for the Winding-up of Companies," and Laws in aid of them respectively.

**Incorporation and short title of Laws.** 4. This Law shall be read and construed as part of the Act, 27 Victoria, session 2, chapter 4, entitled "An Act for the Incorporation and Regulation of Trading Companies and other Associations," and of the Act, 28 Victoria, chapter 42 entitled "An Act for the Winding-up of Companies," and of Laws passed in aid or amendment thereof respectively, and all the said Acts and Laws may, together with this Law, be cited as *The Companies Acts, 1864 to 1906*.

**f) No. 4 of 1908. The Companies (Memorandum of Association) Law, 1908 (26th March, 1908).**

**Power for company to alter objects or form of constitution subject to confirmation by Courts.** 1. 1. Subject to the provisions of this Law a company registered under the *Companies Acts, 1864 to 1906*, may, by special resolution alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, so far as may be required for any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the company, but in no case shall any such alteration take effect until confirmed on petition by the Court which has jurisdiction to make an order for winding up the company. 2. Before confirming any such alteration the Court must be satisfied: a) That sufficient notice has been given to every shareholder or holder of debentures or debenture stock of the company, and any person or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and b) That, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court. Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section. 3. An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper. 4. The Court shall, in exercising its discretion under this Law, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it think fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always, that it shall not be lawful to expend any part of the capital of the company in any such purchase. 5. The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company: a) To carry on its business more economically or more efficiently; or b) To attain its main purpose by new or improved means; or c) To enlarge or change the local area of its operations; or d) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or e) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

Imp. § 9.

**Registration of order together with memorandum as altered or substituted memorandum and articles and consequences thereof.** 2. 1. Where a company has altered the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, or has altered the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the Court, an office copy of the order confirming such

alteration, together with a printed copy of the memorandum of association or deed of settlement so altered, or together with a printed copy of the substituted memorandum and articles of association (as the case may be), shall be delivered by the company to the Deputy Keeper of Records within fifteen days from the date of the order, and the Deputy Keeper of the Records shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Law with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Law) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or as the case may be, such substituted memorandum and articles of association shall apply to the company in the same manner as if the company were a company registered under the Statute 27 Victoria, session 2, chapter 4, with such memorandum and articles of association, and the company's deed of settlement shall cease to apply to the company. 2. If a company makes default in delivering to the Deputy Keeper of the Records any document required by this Law to be delivered to him the company shall be liable to a penalty not exceeding ten pounds for every day during which it is in default.

Imp. § 9.

**Short title and construction.** 3. 1. This Law and the *Companies Acts 1864 to 1906*, shall be construed as one Law, and may be cited collectively as *The Companies Laws, 1864 to 1908*. 2. In this Law the expression "deed of settlement" includes a contract of copartnership or other instrument constituting or regulating the company and not being a Law of the Legislature of this Island, a royal charter, or letters patent.

### **g) No. 7 of 1909. The Companies Laws, 1864—1908, Amendment Law, 1909 (14th April, 1909).**

**Governor in Privy Council may make, etc., rules.** 1. The Governor in Privy Council may from time to time make and when made, revoke, alter, or add to, rules with respect to the recording and registration of any memorandum of association for the incorporation of a company. All such rules, made as aforesaid, when published in the *Jamaica Gazette* shall have the same force and effect as if they were enacted in this Law.

**Limited liability company by resolution and with approval of Governor in Privy Council may change its name.** Deputy Keeper to enter new name and issue altered certificate. Alteration not to affect rights of company nor to render defective legal proceedings. 2. Any limited liability company with the sanction of a special resolution of the company duly passed and with the approval of the Governor in Privy Council testified in writing under the hand of the clerk to the Privy Council may change its name, and upon such change being made, the Deputy Keeper of the Records shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case, but no such alteration of names shall affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Imp. § 8.

**Incorporated with Companies Laws, 1864—1908.** 3. This Law is incorporated and shall be read as one with the *Companies Laws, 1864—1908*.

### **Sale of Goods.**

#### **No. 12 of 1895. The Sale of Goods Law, 1895 (28th May, 1895).**

[This Law is identical in all material respects with the Imperial *Sale of Goods Act, 1893* (56 & 57 Vic. c. 71). There is no provision in reference to market overt.]



### Bills of Lading.

#### No. 2 of 1872. A Law to amend the Law relating to Bills of Lading (5th February, 1872).

[This Law is identical in all material respects with the Imperial *Bills of Lading Act* (18 & 19 Vic. c. 111).]

A carrier who refuses to sign bills of lading, and carries goods gratis is not liable for their loss. — *Toppin v. Nevin*, (1783), Grant N.C. 105. *Sed quaere*, as to loss attributable to negligence. Where a bill of exchange is secured by an indorsed bill of lading, and the master was directed in case the bill of exchange was refused acceptance to deliver the goods to the indorsee, the master is liable for a failure so to deliver the goods. — *Maclean v. Birch*, (1785), Grant N. C. 200.

### Bills of Exchange.

#### a) No. 32 of 1893. The Bills of Exchange Law, 1893 (27th May, 1893).

[This Law is identical in all material respects with the Imperial *Bills of Exchange Act*, 1882 (45 & 46 Vic. c. 71).]

A foreign promissory note is negotiable. — *Boyle v. Smith*, (1784), Grant N.C. 170. The words "value received" are not necessary in a bill of exchange. — *Rex v. Tarver*, (1785), Grant N.C. 196. The defence that a note was given for a gaming debt cannot be set up against the assignee thereof. — *Henriques v. Davis*, (1774), Grant N.C. 6. *Sed quaere*. An indorsement struck out by mistake may be ordered to be considered as restored. — *Campbell v. Shakespeare*, (1784), Grant N.C. 136. An acceptance per procuration is a notice that the acceptor has only a limited authority, and any person taking the bill does so at the risk of the agent having exceeded his authority. *Semble*, except in the case of ordinary trade acceptances given in usual course, a general power of attorney to transact all business does not authorise the attorney to draw or accept bills. — *Nunes v. Williams*, (1875), 1 J.L.R. 171. Days of grace and form of protest are determined by the law of the place upon which the bill is drawn. — *Boyle v. Tyler*, (1784), Grant N.C. 172. In a protest of a bill of exchange drawn in a set the certificate must mention the very bill produced to the notary public. — *Martin v. Roxbury*, (1783), Grant N. C. 125; *Nucella v. Moor*, (1784), Grant N.C. 152.

#### b) No. 7 of 1907. The Bills of Exchange (Crossed Cheques) Law, 1907 (19th April, 1907).

[This law is identical in all material respects with the Imperial *Bills of Exchange (Crossed Cheques) Act*, 1907 (6 Edw. 7, c. 17).]

#### No. 11 of 1895. The Public General Holidays Law, 1895 (27th April, 1895).<sup>1)</sup>

**Public general holidays. Schedule. 1.** The several days mentioned in the Schedule to this Law, and such other special day or days as may be appointed under section 6 of this Law, are hereby declared to be public general holidays.

##### 2. [Relates to public offices.]

**Payments, etc., falling due, or to be done on a holiday, when to be made or done.**

**3.** [As amended by Law No. 2 of 1896, § 1.] Subject to the provisions of the *Bills of Exchange Law, 1893*, as to bills of exchange and promissory notes, all bonds, or other money obligations, which are or shall be made so as to become due and payable on any such public general holiday, shall be payable on the next day following and not on such public general holiday, and whenever any notice is required to be given or any act done whether under any contract, custom, or law, and the same shall fall to be given or done on a public general holiday the same shall be given or done on the day immediately preceding.

**Construction of Laws or documents, when the time for making a payment or doing an act falls on a holiday. 4.** Whenever by any Law, or by any record, specialty

<sup>1)</sup> Incorporating the amendments made by Laws No. 2 of 1896, No. 1 of 1902, No. 30 of 1902, and No. 8 of 1911.

or simple contract, any payment is required to be made, or act to be done, on a day certain, or within a time limited, and such day certain, or the last day of such time limited, shall happen to fall on a public general holiday, such law, record, specialty or simple contract, shall be read and construed, and shall take effect and be enforceable only, in the particular instance, as if such payment or act were thereby required to be made or done on the next day following such public general holiday; and the making of such payment and the doing of such act on such next day following, shall be equivalent to payment of the money or doing of the act on the holiday.

**"Next day following" and "day immediately preceding." Explanation. 5.** [As amended by Law No. 2 of 1896, § 2.] For the purpose of this Law, the "next day following" any public general holiday shall mean the first day succeeding the day, which is neither a Sunday nor a public general holiday.

**Power to appoint special holidays. 6.** It shall be lawful for the Governor, from time to time as he may see fit, by proclamation, to be published in the *Jamaica Gazette* not less than seven days before the day or the first of the days hereinafter mentioned, to appoint any special day or days, not exceeding three at any one time, to be observed as a public general holiday, either throughout the Island or in any particular county, parish, or city, and the day or days so appointed shall thereupon, from the time being, be a public general holiday, and all the provisions of this Law shall apply thereto in precisely the same manner as if such day or days had originally been mentioned in the Schedule hereto.

**When holidays not to be reckoned in computing time. 12.** When any limited time, less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, any public general holiday shall not be reckoned in the computation of such limited time.

**Repeal clause. 13.** The Act 8 Victoria, Chapter 30, and section 8 of Law 18 of 1877, shall be, and the same are hereby repealed.

### *Schedule.*

[As amended.]

1. New Year's Day, or in case of New Year's Day falls on a Sunday, then the day after New Year's Day.
2. Ash Wednesday.
3. Easter Monday.
4. The ninth day of November (or in case the ninth day of November falls on a Sunday, then the day after) which said day shall be known as King Edward the Seventh Day.
5. The first day of August unless it falls on a Saturday or a Sunday then the following Monday.
6. The day after Christmas Day, or when Christmas Day falls on a Sunday, then the 26th and 27th December.
7. The day appointed by the Governor to be kept as the Birthday of the Reigning Sovereign.
8. The 24th day of May in each year, being the birthday of Her late Majesty, Queen Victoria. Whenever the 24th day of May shall fall on a Saturday or Sunday the Public General Holiday to be known as Victoria Day shall be kept and observed on the Monday next following, notwithstanding that such Monday may be the Monday in Whitsun week.

### **Bankruptcy.<sup>1)</sup>**

**a) No. 25 of 1871. A Law Relating to Bankruptcy (29th July, 1871).**

[1—63. Are repealed.]

### *Orders and Warrants of Courts.*

**Enforcement of warrant and orders of Courts. 64.** All the Courts in Bankruptcy, and the officers of such Courts, shall act in aid of and shall be auxiliary to each other in all matters of bankruptcy, and any order of any one Court in a proceeding in bankruptcy may, on application to another Court, be made an order of such other

<sup>1)</sup> The references (Imp.) in the notes are to the Imperial *Bankruptcy Act, 1883.* (46 & 47 Vic. c. 52), unless otherwise indicated.



Court, and may be carried into effect accordingly. And an order of any Court in Bankruptcy seeking aid, together with a request to another of the said Courts, shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by such order, the like jurisdiction which the Court which made the request, as well as the Court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

Imp. § 118.

**Warrants of Bankruptcy Courts. 65.** Any warrant of a Court having jurisdiction in bankruptcy under this Law may be executed in any part of this Island in the same manner and subject to the same privileges in, and subject to which a warrant issued by any justice of the peace against a person for an indictable offence may be executed; and any search warrant issued by a Court having jurisdiction in bankruptcy under this Law for the discovery of any property of a bankrupt may be executed in manner prescribed, or in the same manner and subject to the same privileges in, and subject to which a search warrant for property supposed to be stolen may be executed according to Law.

Imp. § 119.

**Commitment to prison. 66.** Where any Court having jurisdiction in bankruptcy under this Law commits any person to prison, the commitment may, unless otherwise prescribed, be to such convenient prison as the Court thinks expedient; and if the gaoler of any prison refuses to receive any prisoner so committed, he shall be liable, for every such refusal, to a penalty not exceeding one hundred pounds.

Imp. § 120.

67. [Is repealed.]

### *Change of Jurisdiction by Governor.*

**Change of jurisdiction by Governor. 68.** Notwithstanding anything in this Law contained the Governor in Privy Council, may from time to time, by order published in the *Jamaica Gazette*, exclude any District Court from having jurisdiction in bankruptcy over any part or the whole of its district; and, for the purposes of bankruptcy, jurisdiction may attach its district, or any part thereof, to any other District Court or Courts, and may from time to time in like manner revoke or alter any order so made.

[69—109 Are repealed.]

### *Schedules.*

[Are repealed.]

## **b) No. 17 of 1877. The Bankruptcy Jurisdiction Amendment Law, 1877 (21st June, 1877).**

[This Law deals with the constitution and jurisdiction of Courts in Bankruptcy, and the methods of procedure and appeal.]

## **c) No. 33 of 1879. The Bankruptcy Law, 1879 (9th July, 1879).<sup>1)</sup>**

### *Preliminary.*

**Commencement of this Law. 1.** This Law shall commence and come into operation on a day to be notified by the Governor by proclamation, hereinafter called the commencement of this Law.

**Repeal clause. 2.** The Laws specified in the Schedule to this Law are hereby repealed, from and after the commencement of this Law, to the extent specified in the second column to that Schedule; but this repeal shall not affect the past operation of such Laws, or the validity or invalidity of any thing done or suffered before the

<sup>1)</sup> Law No. 21 of 1882, by its § 4, incorporated with this Law also Law No. 11 of 1888, by its § 13.

commencement of this Law, or any right, title, obligation, or liability accrued or to accrue before or after the commencement of this Law, by or under the said repealed Laws; nor shall such repeal interfere with the prosecution or affect the course of any proceeding under or in relation to any adjudication of bankruptcy made or resolution registered, or order made, or petition presented or thing done under such Law before the commencement of this Law, or affect any of the incidents or consequences of any such adjudication, resolution, order, petition or thing, or the jurisdiction or authority of any Court or officer in relation thereto, nor shall such repeal affect any proceedings to be taken under this Law upon any act of bankruptcy or petitioning creditor's debt which was committed or incurred before the commencement of this Law; nor shall this Law interfere with the institution or prosecution of any proceeding in respect of any offence committed against or any penalty or forfeiture incurred under the said enactments hereby repealed.

**Law 17 of 1887 incorporated.** 3. This Law shall be construed as one with Law 17 of 1877.

**Definitions.** 4. In this Law, unless the context otherwise requires, the expression: "Creditors" includes any two or more persons to whom a debt is owing jointly, and also incorporated joint stock companies; "Person" includes a body corporate and a firm; "Bankruptcy petition" or "petition" means a petition praying that the affairs of the debtor may be wound up, and his property administered, under the provisions of the Law of Bankruptcy; "Trustee" means the trustee in bankruptcy as in this Law hereafter mentioned, whether acting as receiver or trustee; "The Court" means the Court exercising jurisdiction in bankruptcy; "Prescribed" means prescribed by rules of Court; "Rules of Court" means such rules and orders of Court in relation to bankruptcy proceedings as are in force under the provisions of the bankruptcy Laws for the time being, or as may be made pursuant to the Judicature Law, 1879; "Property" means and includes money, goods, things in action, land, and every description of property, real or personal, also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined; "Secured creditor" means any person holding a mortgage charge or lien upon the property of the debtor as security for a debt due to him from such debtor; "Deed of arrangement" means a deed or instrument providing by way of trust, inspectorship, or otherwise, for the distribution of all or part of the property of a debtor among all his creditors, and for the payment of a composition to all his creditors out of his property or otherwise.

Imp. § 168.

### *Officers in Bankruptcy.*

*As to offices abolished. Controller in Bankruptcy. Official trustee.*

**Controller in bankruptcy and official trustee abolished. Provisions as to pending proceedings.** 5. The offices of controller in bankruptcy and of official trustee are hereby abolished from and after the commencement of this Law. Where under the saving provisions of section 2 of this Law proceedings pending at the time of the commencement of this Law are continued, the Court shall make such provision for the discharge of the functions of controller in bankruptcy in relation to such proceedings as it thinks fit. Provided that immediately after the appointment of a trustee in bankruptcy under this Law all proceedings in bankruptcy in the Supreme Court wherein the Registrar of the Supreme Court has been the official trustee shall be transferred to the trustee in bankruptcy in the Supreme Court under this Law; and the official trustee shall deliver over to such trustee in bankruptcy all property of the bankrupt, and all books, papers, and documents relating to such bankruptcies, and shall also deliver over or transfer to such trustee in bankruptcy all moneys in his hand, or in the Government Savings Bank, to the credit of any such bankruptcy. Upon the transfer and delivery over as aforesaid, the official trustee shall be entitled to receive commission at the rate of two and a half per cent. upon such moneys as he has actually realized, and the trustee in bankruptcy shall be entitled to a like commission of two and a half per cent. on the distribution of the said moneys among the several creditors entitled thereto: Provided that such delivery and transfer shall not take place otherwise than subject to the approval of the Court.

Imp. § 153.



*As to new offices created. Trustee in Bankruptcy.*

**Trustee in bankruptcy: in the Supreme Court; in the Districts Courts.** 6. There shall be attached to the Courts exercising bankruptcy jurisdiction certain officers to be called trustees in bankruptcy, who shall administer the estates of debtors in bankruptcy subject to the provisions of this Law. The Administrator-General or person lawfully acting as such for the time being shall be ex officio the trustee in bankruptcy in the Supreme Court. The District Court clerks of the several District Courts shall be ex officio the trustees in bankruptcy in their respective Courts.

**Trustee in bankruptcy; his power to appoint agents. Effect of change in trustee.**

**His remuneration. His office.** 7. A trustee in bankruptcy may, on such terms as to remuneration and otherwise as may be prescribed, and with the approval of the Court appoint a proper person to act as his agent in respect of any estate vested in or administered by him under this Law, or in respect of any part of the business thereof. No change of the trustee shall affect any estate or trust vested in or administered by the trustee, but such estates and trusts shall vest in or be administered by the succeeding trustee, who shall hold the same position with regard to such estates and trusts as the former trustee held. No proceedings pending on a change of the person holding the office of trustee shall be affected by such change, but may be continued by and against the succeeding trustee without suggestion, revival, or other similar proceeding. The trustee in bankruptcy in the Supreme Court shall be paid a salary of three hundred pounds per annum, and such trustee and all trustees in bankruptcy shall be entitled to a commission of five per cent. on all dividends<sup>1)</sup> of any estate or trust paid by them in the administration of a bankrupt's estate under an absolute order for bankruptcy under this Law, and a commission of one per cent.<sup>2)</sup> on all dividends of any estate or trust paid by them (or sanctioned by the Court) in the administration of a debtor's estate under a deed of arrangement under this Law. Such remuneration shall be for the time and responsibility of the trustee in the general administration of the estate or trust, and the estate or trust shall not be subject to any other charge in respect thereof, but any expenses in respect of any other matters, including travelling expenses relating to any estate or trust, may be charged against the estate or trust in such manner and to such extent as may be prescribed or specially sanctioned or allowed by the Court. The trustee in bankruptcy in the Supreme Court shall have an office in Kingston. The trustee shall pay all expenses of his office, clerks, and books, and all auctioneer's fees and charges, and other similar expenses<sup>3)</sup>.

Imp. § 72.

*Of Proceedings on a Bankruptcy Petition.**As to who may present a petition and on what grounds.*

**Who may be petitioning creditors, and what are acts of bankruptcy.** 8. [As amended by Law No. 24 of 1892 § 10, and Law No. 38 of 1911, §§ 2—4.] A single creditor or two or more creditors, if the debt owing to such single creditor or the aggregate amount of debts owing to such several creditors from any debtor amounts to a sum of not less than [twenty pounds]<sup>4)</sup> may present a bankruptcy petition to the Court against a debtor, alleging as the grounds of the petition any one or more of the following acts or defaults, in this Law deemed to be and included under the expression "acts of bankruptcy": 1. That the debtor has, in Jamaica or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally, or has executed any other instrument whereby his property is made available for general distribution amongst his creditors. 2. That the debtor has, in Jamaica or elsewhere, made a fraudulent conveyance, gift, delivery, or transfer, of his property or any part thereof. 3. That the debtor has, with intent to defeat or delay his creditors, done any of the following things, namely, departed out of Jamaica, or being out of Jamaica remained out of Jamaica, or departed from his dwelling house, or otherwise absented himself, or begun to keep house, or begun to sell his stock in trade at an undervalue. 4. That the debtor has by any act declared himself unable to meet his engagements. 5. That the debtor has presented a bankruptcy petition against himself. 6. That execution issued in Jamaica against the

<sup>1)</sup> For explanation of the word "dividends", see section 1 of Law 21 of 1882. — <sup>2)</sup> Raised to five per cent. by section 2 of Law 21 of 1882. — <sup>3)</sup> Amended by section 3 of Law 21 of 1882 by allowing trustee to recover auctioneer's fees and other expenses. — <sup>4)</sup> Words in brackets substituted by section 9 of Law 11 of 1888.

debtor on any legal process for the obtaining payment of any sum of money has been levied by seizure and sale of his goods, or enforced by delivery of his goods. 7. That the creditor presenting the petition has served on the debtor a writ in an action in the Supreme Court or a summons in the Kingston Court or in the Resident Magistrate's Court, wherein the creditor claims payment of a liquidated sum amounting to not less than twenty pounds, and has also served on the debtor in Jamaica in the prescribed manner, at or at any time after the date of the service of the writ, a bankruptcy notice in writing, in the prescribed form, requiring him to pay the amount endorsed upon such writ, and the debtor has not within seven days after the service of such notice paid the amount due to the creditor, or secured or compounded for the same to the satisfaction of the creditor, provided that no bankruptcy petition shall be presented on the ground of such last-mentioned act of bankruptcy unless the creditor has obtained final judgment in the action for not less than twenty pounds within three months from the service of the writ. 8. That the creditor presenting the petition has obtained final judgment against the debtor in an action in the Supreme Court, or in a District Court, for a sum of not less than twenty pounds, and has served on the debtor in Jamaica a bankruptcy notice in writing, in the prescribed manner and form, requiring him to pay the amount for which such judgment has been obtained, and the debtor has not within seven days after the service of such notice paid such amount, or secured or compounded for the same to the satisfaction of the creditor. 9. That the creditor presenting the petition, having a demand against the debtor of not less than twenty pounds upon a negotiable security for money upon which the debtor was primarily liable, and upon which payment was at least fourteen days overdue, served on the debtor in Jamaica a bankruptcy notice in writing, in the prescribed manner and form, requiring him to pay the amount of such debt, and that the debtor has not within seven days after the service of such notice paid such amount, or secured or compounded for the same to the satisfaction of the creditor. 10. That the debtor has paid money to or given or delivered any satisfaction or security for the debt of a petitioning creditor, or any part thereof, after such creditor has presented a bankruptcy petition against him: Provided: a) That the alleged act of bankruptcy must have occurred within six months before the presentation of the petition; b) That the debt of the petitioning creditor must be a liquidated sum due or growing due at law or in equity, and must not be a secured debt, unless the petitioner state in his petition that he will be ready to give up such security for the benefit of the creditors in the event of a provisional order being made, or unless the petitioner give an estimate of the value of the security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated, but he shall, on an application being made in the course of the proceedings within the prescribed time by any person interested, give up his security to be dealt with as part of the property of the debtor for the benefit of the creditors upon payment of such estimated value; c) That any person who is for the time being entitled to enforce a final judgment shall be deemed a creditor who has obtained a final judgment within the meaning of this section.

Imp. § 4. See Law No. 24 of 1892. § 7.

**Debtor's petition.** 9. A debtor may present a bankruptcy petition against himself without alleging any grounds.

Imp. § 8.

*As to the verification of the allegation of a petition.*

**Creditor's petition, how to be verified.** 10. Every petition presented by a creditor shall be accompanied by an affidavit of the petitioner in the prescribed form verifying the statements contained in such petition.

Imp. § 7.

**Debtor's petition; what statement to accompany same.** 11. Every petition presented by a debtor shall be accompanied by a statement verified in the prescribed manner of the debtor's property, and of his debts and liabilities, and of his creditors, and of the value and dates of the securities held by them, and of the dates when such securities were actually given, together with a general statement of the profits, losses, and expenses of any business in which he may have been engaged during the twelve months preceding the presentation of the petition, and a memorandum explanatory of the causes of his insolvency.

Imp. § 8.



*Appointment of receiver.*

**Appointment of receiver; his powers and duties. 12.** At any time after a petition has been filed the Court may order that the trustee become the receiver or manager of the property or business of the debtor, or of any part thereof, and the trustee shall thereon enter upon and act in the performance of his office in relation to such property or business at such time, and in such manner, and to such extent, as the Court may from time to time direct, and if directed by the Court, and so far as the nature of the case will admit, do anything which might be done by a trustee after an absolute order for bankruptcy under this Law, and shall, in relation to and for the purpose of acquiring or retaining possession of the property of the debtor, and in addition to any powers given to him by this Law, be in the same position in all respects as if he were a receiver appointed by the Court of Chancery, and the Court may on his application enforce such acquisition and retention accordingly.

Imp. § 10.

*As to parties to proceedings under a petition: Companies, partners, firms.*

**Companies may proceed by agent. 13.** A company, or other body incorporated or authorized to sue, may present a petition and act in any proceedings thereon by an agent duly authorized on its behalf.

Imp. § 148.

**Firms may be named by their style. 14.** Any two or more persons being partners may take proceedings or be proceeded against under this Law in the name of their firm, but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm to be disclosed in such manner, and verified on oath or otherwise, as the Court may direct.

Imp. § 115.

**Special provision as to certain companies. 15.** A provisional order or deed of arrangement under this Law shall not be made against or by any partnership association or company corporate or registered under the Act 27 Victoria, Session 2, Chapter, 4.

*As to consolidating, staying, adjourning, continuing, and dismissing proceedings under a petition.*

**Consolidating petitions against partners separately. 16.** Where a petition is presented against a member of a partnership whilst bankruptcy proceedings are pending on a petition against another member of the same partnership, the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Imp. § 112.

**Consolidating petitions against same debtor. 17.** Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, upon such terms as the Court thinks fit.

Imp. § 106.

**Staying proceedings. 18.** The Court may at any time for sufficient reasons make an order staying proceedings under a petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

Imp. § 109.

**Adjourning and dismissing petitions. 19.** The Court may adjourn any petition, either conditionally or unconditionally, for the procurement of further evidence or for any other just cause, or may dismiss the petition with or without costs as it thinks just.

Imp. § 105.

**Substitution of other creditor as petitioner in case of delay. 20.** Where a petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Law in the case of a petitioning creditor.

Imp. § 107.

**Proceedings continued though debtor dies. 21.** When a debtor by whom a petition has been presented or against whom a provisional order has been made dies, the proceedings shall be continued as if he were alive.

Imp. § 108.

*Provisional order.*

**Notice of petition need not be served.** 22. It shall not be necessary to serve a petition or any notice thereof on the debtor.

**Provisional order, when to be made.** 23. As soon as may be after the presentation of a petition the Court, if satisfied by ex parte evidence or otherwise: a) In the case of a creditor's petition, of the petitioning creditor's debt and of the act or of one of the acts of bankruptcy alleged, or b) In the case of a debtor's own petition, that the debtor has duly filed the statement required under section 11 of this Law, shall make on the petition an order, in this Law referred to as a provisional order, that the affairs of the debtor shall be wound up and his property administered under the Law of bankruptcy.

Imp. § 5.

**Service of provisional order.** 24. Where a provisional order is made on a creditor's petition, a copy of the order shall be served on the debtor in the prescribed manner, together with a notice that within a specified number of days the debtor may show cause why the provisional order should be revoked. Where the provisional order is made on the debtor's own petition it shall not be necessary to give such notice.

Imp. § 13.

**Revocation of provisional order.** 25. If the debtor within the time appointed shows to the satisfaction of the Court that either the proof of the petitioning creditor's debt, or of the act of bankruptcy, is insufficient, and if upon such showing no other sufficient petitioning creditor's debt or act of bankruptcy is proved, or if any ground is shown to exist which would render the making of a provisional order inequitable, the Court shall revoke the provisional order, and unless it sees good cause to the contrary shall order costs to be paid to the debtor.

Imp. § 7.

**Order for debtor to file statement of his affairs, and service thereof.** 26. If the provisional order is not so revoked, an order shall be served on the debtor, in the prescribed manner, requiring him to file in Court, within the specified number of days after the date of the service of the order, a statement verified in the prescribed manner, and containing the particulars specified in section 11 of this Law, and giving notice that if he does not do so the provisional order may, on the application of a creditor, be made an absolute order for bankruptcy, and that the bankruptcy will be gazetted.

Imp. § 16.

**Absolute order for bankruptcy.** 27. If the debtor fails to comply with the order, or to shew a sufficient excuse for not having complied with it, the Court may, on the application of any creditor, make an absolute order for bankruptcy against the debtor and direct such bankruptcy to be gazetted.

Imp. § 16.

**Effect of provisional order as to staying proceedings to recover debts.** 28. When a provisional order has been made against a debtor, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of such debt, except in manner directed by this Law. All proceedings to recover any such debt shall, if not already stayed, be stayed upon notice of such order being given in manner prescribed, but the Court may, on application by any creditor or person interested, allow any proceedings commenced to be continued upon such terms and conditions as it thinks just. The provisions of this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with the same if the section has not been passed.

Imp. § 9.

**Relation back of provisional order.** 29. The effect of the provisional order shall be deemed to have relation back to and to commence at the time of the act of bankruptcy being completed on which the provisional order is made, hereinafter referred to as the commencement of the bankruptcy, or, if the debtor is proved to have committed more acts of bankruptcy than one, to have relation back and to commence at the time of the first of the acts of bankruptcy proved to have been committed by the debtor within six months next preceding the date of the presentation of the petition; but the effect of the provisional order shall not relate to any act of bankruptcy prior to the one on which such order is made, unless at the time of committing such prior act the debtor was indebted to some creditor or creditors in a sum or



sums sufficient to support a petition, and unless such debt or debts are still remaining due at the date of the provisional order.

Imp. § 43.

**Debtor's property, when and how divisible. 30.** When a provisional order has been made against a debtor, his property shall become divisible amongst his creditors in proportion to the debts proved by them.

Imp. § 20.

**Debtor's property, when it vests in trustee, and when and how to be administered.**

**31.** When a provisional order has been made against a debtor, the property of the debtor shall immediately pass to and vest in the trustee, without any conveyance or assignment or transfer whatever, to be by him in due course, either under an absolute order for bankruptcy, or under a deed of arrangement as hereinafter provided by this Law, realized, administered, and distributed with as much despatch as is reasonably practicable for the benefit of the creditors.

Imp. § 20. See Law No. 24 of 1892, § 13.

**Duty of debtor to aid trustee. 32.** When a provisional order has been made against a debtor, it shall become the duty of the debtor to the utmost of his power, so far as he may be required, to aid in the realization of his property, and the distribution of the proceeds amongst his creditors, and subject to the provisions of this Law to submit to such examinations in respect of his property or his creditors as the trustee or the Court may require, and to execute such powers of attorney, conveyances, deeds, and instruments, and generally to do all such things in relation to his property, and the distribution of the proceeds amongst his creditors, as the trustee or Court may reasonably require or as may be prescribed.

Imp. § 24.

**When debtor punishable as for a contempt of court. 33.** If the debtor wilfully fails to perform any of the duties imposed on him by this Law, or if he fails to deliver up possession of any part of his property, which is divisible amongst his creditors under this Law, and which may for the time being be in his possession or control, to the trustee or any person authorized by the Court to take possession thereof, he shall, in addition to any other punishment to which he may be subject be guilty of a contempt of court and may be punished accordingly.

Imp. § 24.

#### *Meeting of creditors, and resolutions.*

**Meeting of creditors, when to be summoned. 34.** The Court shall, as soon as practicable after the provisional order, summon a general meeting of the creditors of the debtor; but if under any of the foregoing provisions an absolute order for bankruptcy has been made against the debtor before the day appointed for such meeting, the meeting shall not be held.

Imp. § 15.

**Meeting, how to be held and conducted, and as to voting thereat. 35.** The meeting shall be held in the prescribed manner, and subject to the prescribed regulations as to the quorum of creditors, adjournment of meeting, and all other matters relating to the conduct of the meeting, or the proceedings thereat: Provided that: 1. A person shall not be entitled to vote as a creditor unless he has in the prescribed manner proved a debt that is due to him. 2. A creditor shall not vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained. 3. A secured creditor shall, for the purpose of voting, be deemed to be a creditor only in respect of the balance (if any) due to him after deducting the value of his security; and the amount of such balance shall, until the security is realized, be determined or assessed in the prescribed manner. He may, however, give up or abandon the security, and thereupon he shall rank as a creditor in respect of the whole sum due to him. 4. A creditor shall not vote in respect of any current bill of exchange or promissory note held by him under discount, unless he is willing to treat the liability of every person who is liable thereon antecedently to the debtor, and whose estate is not in course of administration under this Law, as security in his hands, and to estimate the value thereof and deduct the same from his proof, in which case he shall, on application being made within the prescribed time by any person interested, give up such security for the benefit of the creditors of the debtor upon payment of such estimated value. Provided, that such estimate (except so far as the creditor may receive any payment as aforesaid in respect thereof) shall not prejudice the right of such creditor to receive from the estate of the debtor a dividend upon the whole

amount of such bill or note; 5. Votes may be given either personally or by proxies as may be prescribed.

Imp. Sched. I, §§ 8—11.

**Duty and power of trustee at meeting.** 36. The trustee shall attend the meeting, and shall receive and decide upon proof of debts in the prescribed manner, and in so far as it may be necessary for determining the right of voting at such meeting.

**Resolutions at meetings.** 37. At the meeting the creditors may, by the votes of a majority in value of the creditors present, personally or by proxy: a) Resolve that the proceedings under the petition be stayed, and the affairs of the debtor wound up and his property administered under a deed of arrangement, the nature of which may or may not be specified in the resolution, or b) Resolve that adjudication of bankruptcy be made, and c) Resolve at their discretion, that a creditor to be named at such meeting shall be associated with the trustee to assist and advise the trustee in the administration of the debtor's estate, but the appointment of such creditor shall not affect the responsibility of the trustee. A creditor so appointed shall receive out of the debtor's estate such remuneration for his services as the Court may think fit.

**Report to the Court as to resolutions.** 38. The resolutions come to shall be filed with the proceedings, and reported by the trustee to the Court. The trustee shall report to the Court also in case no meeting is held, or no resolution come to.

**Procedure on resolution for deed of arrangement.** 39. If the resolution be that the proceedings under the petition be stayed, the Court shall make an order that the proceedings be stayed accordingly for such time as may be necessary to obtain the confirmation of a deed of arrangement as hereinafter provided, and such order may be made on such terms and subject to such conditions as the Court may think just.

**Absolute order for bankruptcy, when to be made.** 40. If no meeting is held, or if no resolution is come to, or if the resolution be that adjudication of bankruptcy be made, or if it is shewn to the satisfaction of the Court that there is no reasonable probability of the confirmation of a deed of arrangement and that delay will not be for the benefit of the creditors, the Court shall make an absolute order for bankruptcy against the debtor.

Imp. § 20.

*Proceedings under an order for a deed of arrangement.*

**Deed of arrangement how made, executed, proved and filed. Statement to accompany same.** 41. Where an order is made that proceedings in bankruptcy against a debtor be stayed for such time as may be necessary to obtain the confirmation of a deed of arrangement, a deed may be entered into between a debtor and his creditors, subject to the following provisions: 1. The deed must be assented to by a majority in number representing three-fourths in value of the creditors of the debtor, and no creditor shall be reckoned in such majority unless he has proved his debt in manner prescribed. The assent of a creditor shall be testified by his signing the deed of arrangement, or some document in a form prescribed for that purpose. 2. The deed shall be acknowledged or proved in the manner provided by the Act 27 Victoria, Chapter 17. 3. When the deed has been executed by the debtor an attested copy thereof shall be filed in the Court. 4. There shall be filed with the deed: a) A list showing the debts and liabilities of the debtor, and the time when the same were contracted or incurred, and the considerations for the same, the names, residences, and occupations of his creditors, and the respective amounts due to them, and all securities held by them, and the date when such securities were respectively given; b) A detailed statement of his debts and property, and the estimated value thereof; c) An affidavit in the prescribed form by the debtor, or some person able to depose thereto, verifying such list and statement. The list or statement may be from time to time amended by leave of the Court, and every such amendment shall be in like manner verified by affidavit.

**Consideration of deed by the Court.** 42. At the time appointed for the confirmation of the deed, the Court shall on the application of any creditor of the debtor take the deed into consideration.

**Proceeding when deed is not confirmed.** 43. If there is no application to the Court to consider the deed, or if no deed has been filed, or if the Court does not confirm the deed, the Court shall order that the proceedings in bankruptcy shall forthwith continue from the point at which they were stayed, or if it thinks fit may order



the adjournment of the consideration to allow time for the execution of the deed or another deed.

**Proceeding on confirmation of deed. 44.** If upon the consideration of the deed the Court is satisfied that the requirements of this Law have been complied with, it may in its discretion, by order, confirm the deed, and may make such order as to the further staying of any proceedings, or the annulling of any provisional order under the petition, as it thinks fit.

**Confirmation of deed conclusive as to its validity. 45.** The order of the Court confirming the deed shall be conclusive evidence of the validity of the deed, and after such order the deed shall not be liable to be impeached or disturbed in any Court on the ground of any thing being contained therein or omitted therefrom, or on any other ground whatsoever except in manner provided by this Law.

**Administration of estate under confirmed deed. 46.** If the deed is confirmed it shall be binding on all creditors, and all questions under it shall be determined by the Court according to the Law of Bankruptcy and every creditor under the deed shall be entitled to be paid his debt or, as the case may be, a dividend or composition thereon rateably with the other creditors of the arranging debtor, but all creditors who would be entitled to priority of payment under an adjudication of bankruptcy against the arranging debtor shall be entitled to the like priority under the deed, and regard shall be had to the rule in bankruptcy as to the application of joint or separate estate in payment of creditors.

**Discharge of debtor when deed carried out. 47.** The Court may at any time after the confirmation of the deed make an order for the discharge of the debtor in accordance with the terms of the deed, or if there are no terms relating to discharge then upon the report of the trustee that the arrangements under the deed have been fully carried out. Such order shall, except in so far as may be otherwise expressly provided in this Law, have all the effect of an unconditional discharge of a bankrupt as hereinafter mentioned made upon proceedings after an absolute order for bankruptcy.

**When deed may be declared void, and effect thereof. 48.** If at any time after the confirmation of the deed it appears to the Court that the debtor has not acted in good faith in relation to the bankruptcy proceedings before or under the deed, or is not assisting the trustee to the utmost of his power to administer the estate in accordance with the terms of the deed, or that for other reasons it is expedient or just, the Court may by order declare that the deed so far as regards any release to the debtor therein contained or provided for shall be void, and the deed shall accordingly be void to such extent, and the Court may without any further condition make an absolute order for bankruptcy against the debtor, which shall take effect from the time of the making thereof, provided that no act done in pursuance of a deed which has been confirmed shall be impeached or disturbed by reason of any such order, and in the administration of the property of the debtor thereafter regard shall be had to all payments made in pursuance of the deed.

**As to deeds of arrangement in cases of partners. 49.** This part of this Law shall apply to any case in which members of a partnership enter into a deed of arrangement with their creditors under the provisions of this Law, and any such deed of arrangement may be entered into with the joint creditors without any of the separate creditors being parties to or included in the deed, or with separate creditors without any of the joint creditors being parties to or included in the deed. Provided that in a distinct arrangement with any particular class of creditors the rule in bankruptcy respecting the application of joint or separate estate to the payment of creditors shall not be contravened.

**As to assent of certain creditors in cases of partners. 50.** Where a deed of arrangement is made by members of a partnership with their joint and separate creditors, any delay in obtaining, or failure to obtain, the assent of some or one of the classes of separate creditors shall not prevent the deed being confirmed so as to bind the joint creditors and any other class of separate creditors.

**As to debt incurred, or increased, or forborne, by means of fraud. 51.** Where a debtor who has executed a deed of arrangement has incurred or increased a debt or obtained forbearance thereof by fraud, he shall be liable to pay to the defrauded creditor the balance of such debt after deducting any sum or sums which may have been received by such creditor by way of composition or dividend under the deed,

provided that such creditor has not assented to the deed in manner provided by this Law.

**Rights of creditors against third parties not affected.** 52. No creditor of the arranging debtor, whether assenting to the deed or not, shall be prejudicially affected by this part of this Law with respect to any right or remedy against any person other than the arranging debtor.

**Administration of estate on confirmation of deed.** 53. When the deed of arrangement is confirmed, the trustee shall proceed to administer the debtor's estate so as to give full effect to the deed, and subject to the provisions of this Law so far as the same may be applicable, but the debtor shall not be required to submit himself to the public examination of the Court.

See Law No. 24 of 1892, § 5.

*Proceedings under an absolute order for bankruptcy.*

**Examination of debtor, and into his affairs.** 54. When an absolute order for bankruptcy has been made against a debtor the Court shall direct the adjudication to be gazetted, and shall direct a public sitting to be held on a day to be named for the purpose of examining into the affairs of the debtor, and the debtor shall attend at such sitting and shall submit himself to examination as to his conduct, dealings, and property. The sitting may be adjourned as often as the Court thinks fit, and the debtor shall attend at each adjourned meeting. The Court may at such sitting take such evidence as it thinks necessary, and such evidence as may be rendered by the creditors, or the trustee, or the debtor, or any of them. For the purposes of the examination the Court, may take evidence *viva voce*, or by affidavit, or by interrogatories, or by commission, as it thinks fit. When the Court is satisfied that the debtor's affairs have been sufficiently investigated it may declare the examination finished.

Imp. § 17. Amended by § 8 of Law 11 of 1888, which see.

**Omission to keep or produce proper books, when and how punishable.** 55. [As amended by Law No. 5 of 1910, § 5.] 1. If at any time after an absolute order for bankruptcy has been made against a debtor it appears to the Court that the debtor, having been engaged in any trading or other business, has not kept and produced proper books of account, papers, or vouchers, by means of which the trustee may be able to obtain a correct knowledge of his affairs, it may if it thinks fit order the debtor to be imprisoned in some convenient prison for any period not exceeding three months, unless good cause is shewn to the Court why such books, papers, and vouchers have not been kept and produced. 2. If the books of account in this section required to be kept and produced shall not have been kept written or printed in the English language, they shall not be deemed to be proper books of account within the meaning of this section unless for good cause shewn by the debtor the Court otherwise determines.

**Debts incurred by breach of trust or recklessness or extravagance, how far punishable.** 56. If at any time before an order of discharge is granted to a debtor it appears to the Court that the debtor has incurred or contracted any debt by means of a breach of trust, or without having had any reasonable or probable ground of expectation at the time when he incurred or contracted such debt of being able to pay the same, or that he has lived extravagantly or beyond his proper means, it may if it thinks fit order the debtor to be imprisoned in some convenient prison for any period not exceeding three months: Provided that if in the opinion of the Court the conduct of the debtor has rendered him liable to punishment for a misdemeanour under this Law, it may direct the prosecution of the debtor for such misdemeanour, and cause the trustee to prepare a statement of the case for the conduct of the prosecution.

**Administration of debtor's estate after order absolute.** 57. When an absolute order for bankruptcy has been made against a debtor the trustee shall proceed to administer the debtor's estate for the benefit of the creditors, subject to the provisions of this Law.

*Of the Discharge of a Bankrupt.*

*As to the granting of a discharge.*

**Application for discharge.** 58. When the public examination of the bankrupt is finished he may apply to the Court to grant him his discharge, and the Court shall appoint a sitting for the purpose of considering and determining the question of granting such discharge.

Imp. 53 & 54 Vic. c. 71, § 8.



**Opposition to discharge. 59.** The trustee may oppose the discharge, and show cause why it should be refused, or postponed, or made subject to conditions.

Imp. 53 & 54 Vic. c. 71, § 8. Amended by § 4 of Law 11 of 1888 by allowing any creditor to oppose, and show cause, whether the trustee concurs or not.

**Consideration of application, and dealing with same. 60.** The Court shall proceed to consider the conduct of the bankrupt before and after the making of the provisional order, and the manner and circumstances in and under which his debts have been contracted, and the Court may if it thinks fit grant the debtor an immediate order of discharge: But if the Court is of opinion that the debtor has carried on trade by means of fictitious capital, or that he could not have had at the time when any of his debts were contracted any reasonable or probable ground of expectation of being able to pay the same, or that he had contracted any of his debts fraudulently, or by means of breach of trust, or that he has with intent to conceal the true state of his affairs wilfully omitted to keep proper books of account, or that his insolvency is attributable to rash and hazardous speculation, or unjustifiable extravagance in living, or that he has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any suit to recover any debt or money due from him, or that he is indebted for damages in any action for a malicious injury to the person or property of the plaintiff therein it may refuse an order of discharge, or may suspend the same from taking effect for such time as it thinks fit. And when it grants an order it shall impose such conditions under the provisions of section 61 of this Law as appear to be just and reasonable under the circumstances.

Imp. § 53 & 54 Vic. c. 71, § 8. Construction of last paragraph of § 60 explained by § 5 of Law 11 of 1888. The section also enlarged by § 7 of said Law, and by §§ 3 and 4 of Law 24 of 1892.

**Conditions of discharge. 61.** When the Court grants an order of discharge it may grant it subject to any condition or conditions touching any salary, pay, emoluments, profits, wages, earnings, or income, which may afterwards become due to the bankrupt, and touching after-acquired property of the bankrupt, and it may order that the bankrupt shall thereafter pay to the trustee for the benefit of the creditors under the bankruptcy such sum as may be stated in the order granting him his discharge, but payment of such sum shall only be enforced against the debtor by leave of the Court, and to such extent from time to time as the Court may approve, and if subsequently the debtor should be adjudged bankrupt, or a provisional order be made against him, the amount (if any) remaining unpaid under any such order for payment shall be postponed until the debts due to the creditors under such subsequent bankruptcy or provisional order shall have been fully paid or satisfied.

Imp. 53 & 54 Vic. c. 71, § 8.

*As to the effect of an order of discharge.*

**How far order of discharge releases debtor from his debts. 62.** An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or breach of trust, nor from debt or any liability whereof he has obtained forbearance by any fraud, but it shall release the bankrupt from all other debts provable under the bankruptcy with the exception of: 1. Debts due to the Crown or to the Government of Jamaica. 2. Debts with which the bankrupt stands charged at the suit of the Crown, or of any person, for any offence against a Statute or Law relating to any branch of the public revenue, or at the suit of any public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; And he shall not be discharged from such excepted debts unless the Treasurer certifies in writing his consent to his being discharged therefrom.

Imp. § 30. 53 & 54 Vic. c. 71, § 10.

**Does not release partner or joint debtor. 63.** An order of discharge shall not release any person who at the date of the order of adjudication was a partner with the debtor, or was jointly bound, or had made any joint contract with him.

Imp. § 30.

**How order of discharge pleaded and proved. 64.** An order of discharge shall be sufficient evidence of the bankruptcy, and of the validity of the proceedings thereon; and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by such order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Law and the special matter in evidence.

Imp. § 30.

*Administration of a Debtor's Estate by the Trustee.**Duties and powers of the trustee.*

**Estate of debtor to be administered for the benefit of his creditors. 65.** The trustee under the control of the Court shall administer the debtor's estate for the benefit of the creditors subject to the provisions of this part of this Law.

**Trustee to take possession of debtor's property. 66.** [As amended by Law No. 24 of 1892 § 12.] The trustee shall as soon as may be after the making of a provisional order, but subject to the directions of the Court, take possession of all property real and personal, and all books, papers, and documents, of the debtor, and exercise such of the powers conferred on him by this Law as may be necessary for the purpose of acquiring and retaining possession thereof, and for the purpose of protecting the right of the creditors.

Imp. § 50.

**Trustee to recover debts. 67.** The trustee shall to the best of his power discover and recover all debts due to the debtor's estate.

**Trustee to examine debtor's books. 68.** The trustee shall examine and verify the books, papers, and vouchers, relating to the debtor's affairs.

**Power of trustee to sell property. 69.** The trustee may sell all or any part of the property of the debtor (including the good will of the business, if any, and the debts growing due to the debtor) by public auction, or tender, or private contract, and transfer the whole thereof to any person or company, or sell the same in parcels, and accept as the consideration for such transfer and sale a sum to be paid or secured to be paid at such time and in such manner as he thinks fit.

Imp. § 56.

**How far trustee may carry on debtor's trade. 70.** The trustee may carry on the trade of the debtor so far as may be necessary or expedient for the beneficial winding-up or sale of the same, and for that purpose, or for the general management and realization of his property, employ the debtor himself, or any other person or persons.

Imp. § 57.

**Trustee's power to bring or defend actions. 71.** The trustee may bring, institute, or defend, any action or other legal proceeding relating to the property of the debtor.

Imp. § 57.

**Trustee's power to recover dividends. 72.** The trustee may prove, rank, claim, and draw dividend, in respect of any debt due to the debtor.

Imp. § 56.

**Trustee's power to arbitrate or compromise claims of debtor. 73.** The trustee may refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist, between the debtor and any person who may have incurred any liability to the debtor, upon the receipt of such sums payable at such times and generally upon such terms as may be agreed upon.

Imp. § 57.

**Trustee's power to compromise claims against debtor. 74.** The trustee may make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the petition.

Imp. § 57.

**Trustee's powers to compromise claims as to debtor's property. 75.** The trustee may make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the debtor, made or capable of being made on the trustee by any person, or by the trustee on any person.

Imp. § 57.

**Powers of trustee as to exercising discretion or executing deeds. 76.** The trustee may exercise any powers and discretions the capacity to exercise which is vested in the trustee under this Law, and may execute any powers of attorney, deeds, and other instruments, for the purpose of carrying into effect the provisions of this Law.

Imp. § 56.

**Trustee's power as to estates in tail. 77.** The trustee may deal with any property to which the debtor is beneficially entitled as tenant in tail in the same manner as the debtor might have dealt with the same.

Imp. § 56.



**Proof of debts. 78.** The trustee shall receive and decide on proof of debts.

**Trustee under control of the Court. 79.** The trustee shall be deemed an accounting party to the Court, and shall be under the control and subject to the directions of the Court.

**Trustee may ask the Court for directions. 80.** The trustee may at any time apply to the Court for direction respecting his rights or duties with regard to the debtor's estate, or with regard to any matters arising out of the management or conduct of the estate.

Imp. § 89.

**Trustee acting under such directions protected. 81.** The trustee obtaining bona fide direction of the Court, or acting bona fide on such direction, shall be deemed, so far as regards his own responsibility, to have discharged his duty therein as trustee with regard to the matter in respect of which such direction is given.

**Trustee to keep books. 82.** The trustee shall keep in manner prescribed proper books, in which he shall from time to time make or cause to be made entries or minutes of such matters in relation to the debtor's estate as may be prescribed. Any creditor of the debtor may, at such times as may be prescribed, personally or by his agent inspect such books.

Imp. § 80.

**Money collected to be deposited in the Savings Bank. 83.** The trustee shall pay all sums from time to time received by him in the course of the administration of the debtor's estate into the Government Savings Bank, to a separate account to the credit of the estate, and may draw out money so deposited in the same manner as any other depositor, for the purposes of administering such estate.

Imp. § 74.

**All moneys to be paid into Court after two years. 84.** The trustee shall, at the expiration of two years from the date of the provisional order, pay all moneys then in hand, and all moneys thenceforth received by him, into Court in manner prescribed, unless under special circumstances the Court shall by order extend the time.

**Periodical statements by trustee to the Court. 85.** The trustee shall from time to time, as may be prescribed, submit to the Court a statement showing what has been done under any petition under which he is trustee up to the date of the statement, which statement shall be in the prescribed form as to details and otherwise, and shall include an account of payments, receipts, and fees.

Imp. §§ 78.

**Audit of trustee's accounts. 86.** The trustee shall submit his accounts for audit at such times and in such manner as may be prescribed.

Imp. § 78, 81.

*Control of the Court over the administration of the debtor's estate by the trustee.*

**Trustee responsible to the Court. 87.** The Court shall examine all statements submitted to it by the trustee, and may order the trustee to account for any misfeasance, neglect, or omission, and to make good any loss which the estate of the debtor may have sustained by such misfeasance, neglect, or omission.

**Power of Court to examine trustee and his books. 88.** The Court may at any time require the trustee to answer any inquiry in relation to any matter in which he is engaged, and may examine him, or any other person on oath concerning such matter, and may cause his bankruptcy books, either generally or in relation to any particular estate, to be examined by any person to be named by it.

Imp. § 91.

**Power of Court to control trustee. 89.** If the trustee at any time improperly neglects, refuses, or delays, to assume the management of any estate or trust under this Law, or if he improperly acts or omits to act in the management of any estate or trust vested in or administered by him, or the duties of which he has entered upon, or if he improperly neglects, refuses, or delays, to pay forthwith the amount of any judgment, decree, or order, recovered against him, or if he pays the amount of any such judgment, decree, or order, out of any funds not properly liable to such payment, or if he improperly acts or omits to act in any other matter with respect to any estate or trust vested in or administered by him or with respect to any duty imposed upon him by this Law, or if there is reasonable ground to think that he is about improperly to act, or to omit to act, with respect to any of the matters aforesaid, any person interested in such estate, trust, or matter, may apply to the Court for an order, requiring him to do, or to refrain from doing, the act in respect of which such per-

son complains, and the Court may thereupon make such order as it thinks fit. Such order may direct that the trustee shall pay out of his own pocket any sum of money required to compensate any person, estate, or trust, for the consequences of any wrongful act or omission of the trustee or receiver.

Imp. § 91.

**Appeal to the Court against trustee. 90.** The debtor, or any of the creditors, or any other person, if aggrieved by any act or decision or estimate of the trustee, may apply to the Court, and the Court may confirm, reverse, or vary, the act complained of, and may make such order in the matter as it thinks just, and may direct any question of fact or assessment of value or damage to be tried by a jury.

Imp. § 90.

**Power of Court to enable any person to do acts for the debtor. 91.** Where the debtor refuses or neglects to do any act in reference to the recovery, sale, or transfer of, or otherwise dealing with, any property remaining in him under this Law in trust for his creditors, for twenty-four hours after he has been required by the receiver or trustee to do the same, the Court may, on application by the receiver or trustee, by order authorize such act to be done in the name of the debtor, or otherwise by any person named in the order for that purpose, and every act done by such person shall be as effectual for all purposes as if the debtor had done the same, and shall not be revocable or impeachable by the debtor.

### *Distribution of Debtor's Property.*

#### *General provisions as to property of debtor.*

**What the property of the debtor comprises. 92.** [As amended by Law No. 8 of 1885, §§ 1, 2.] The property of the debtor divisible amongst his creditors and vesting in the trustee, and in this Law referred to as the property of the debtor, shall comprise all such property as may belong to or be vested in the debtor at the commencement of the bankruptcy, or may be acquired by or devolve on him at any time previously to his discharge, and the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the debtor for his own benefit at the commencement of the bankruptcy, or at any time previously to his discharge, and all goods and chattels being at the commencement of the bankruptcy in the possession, order, or disposition of the debtor by the permission of the true owner, of which goods and chattels the debtor is reputed owner, or of which he has taken upon himself the sale or disposition as owner, provided that things in action, other than debts due or growing due to him, shall [not]<sup>1)</sup> be deemed goods and chattels within the meaning of this section, and shall not comprise property held by the debtor in trust for any other person<sup>2)</sup> or the tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value inclusive of tools and apparel and bedding, not exceeding thirty pounds in the whole.

Imp. § 44.

#### *Special provisions as to certain kinds of property of debtor.*

**Appropriation of portion of salary of debtor payable by Government. 93.** Where a debtor is in the enjoyment of any salary, pension, or allowance, paid by the Government of this Island, the trustee shall receive for distribution amongst the creditors so much of the debtor's salary, pension, or allowance, as the Court upon the application of the trustee thinks just and reasonable, to be paid in such manner and at such times as the Court directs.

Imp. § 53 (1).

**Appropriation of portion of other salary or income. 94.** Where a debtor is in the receipt of a salary or income other than as aforesaid, the Court upon the application of the trustee shall from time to time make such order as it thinks just for the payment of such salary or income, or of any part thereof, to the trustee, to be applied by him in such manner as the Court may direct.

Imp. § 53 (2).

**Delivery to trustee of moneys and securities of debtor. 95.** Any treasurer or other officer, or any banker, attorney, or agent of a debtor, shall pay and deliver to

<sup>1)</sup> Words in brackets inserted by § 1 of Law 8 of 1885. — <sup>2)</sup> Amended by § 2 of Law 8 of 1885 by striking out words.



the trustee all moneys and securities in his possession or power, as such officer or agent, which he is not by Law entitled to retain as against the debtor or the trustee or receiver.

Imp. § 50 (6).

**Transfer of stocks, shares, etc. 96.** Where any part of the property of the debtor consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the right to transfer such property shall be absolutely vested in the trustee to the same extent as the debtor might have exercised the same if a petition had not been filed against or by him.

Imp. § 50 (3).

**Onerous and unprofitable property of debtor. Power of trustee to disclaim same.**

**Effect of disclaimer. 97.** Where any part of the property of the debtor consists of land of any tenure burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell, or has taken possession of such property, or exercised any act of ownership in relation thereto, may by writing under his hand disclaim such property, and upon the execution of such disclaimer the property disclaimed shall if the same be a contract be deemed to have determined at the date of the filing of the bankruptcy petition so far as regards the interest of the debtor therein, and the liability of himself and property and of the trustee thereunder, and if the same be a lease to have determined at the same date, so far as regards the interests of the debtor therein, and the liability of himself and his property and the trustee to the performance of the covenants and the conditions thereof, and if the same be shares in any company to have been forfeited at the same date; and whatever be the nature of the property it shall (unless the Court otherwise order) pass to the person (if any) entitled thereto on the determination of the estate or interest of the debtor therein, and in no case shall any estate or interest or liability therein or thereunder remain in the debtor. Such disclaimer shall not prejudice the rights or remedies or affect the obligations of any person other than the debtor and the trustee, and the Court may, on application made by any person claiming any interest in the disclaimed property, and upon hearing such persons as it thinks fit, make an order for the vesting of the same property in or delivery thereof (together with any deeds or documents relating thereto) to any person or persons entitled thereto, or a trustee for him or them, and upon such terms as the Court may think just, and upon any such vesting order being made the property composed therein shall vest according to the tenor thereof in the person or persons therein named in that behalf, without any conveyance or assignment for the purpose. Any person injured by the operation of any such disclaimer as aforesaid shall be deemed to be a creditor of the debtor to the extent of such injury, and may accordingly prove the same as a debt under the bankruptcy petition.

Imp. § 55.

**Limit to trustee's right to disclaim. 98.** The trustee shall not be entitled to disclaim any property in pursuance of this Law in any case where an application in writing has been made to him as trustee, by any person interested in such property, requiring such trustee to decide whether he will disclaim or not, and the trustee has for a period of not less than twenty-eight days after the receipt of such application, or such further time as may be allowed by the Court, declined or neglected to give notice whether he disclaims the same or not.

Imp. § 55.

*Special provisions as to the benefit of transactions affecting the debtor and his property.*

**Voluntary settlements by debtor, how far void as against trustee. 99.** [As amended by Law No. 11 of 1888, § 11.] Any settlement of property, (not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settler of property which has accrued to the settler after marriage in right of his wife,) shall if a provisional order in bankruptcy as hereinafter mentioned take effect against the settler within two years after the date of such settlement, be void as against the trustee. Any covenant or contract made by any person in consideration of marriage for the future settlement upon his

wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall if, a provisional order take effect against him before such money or property has been actually transferred or paid pursuant to such contract or covenant, be void against the trustee. Settlement shall for the purposes of this section include any conveyance, gift, or transfer of property.

**Imp. § 47.** Extension of power to avoid certain voluntary settlements by §§ 1 and 2 of Law 11 of 1888, which see. See also § 3 of said Law, as to what may be deemed a voluntary settlement.

**Fraudulent preferences. 100.** Every conveyance or transfer of property, or charge thereon, every payment, every obligation, and every judicial proceeding, made, incurred, taken, or suffered, by any person unable to pay his debts as they become due from his own moneys, in favour of any creditor or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if a provisional order take effect against the person making, taking, paying, or suffering the same within six months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee.

**Imp. § 48.**

**Conveyances to a trustee for a creditor, how far void. 101.** Every conveyance or transfer of property, real or personal, made by any person unable to pay his debts to any other person in trust for any creditor shall be absolutely void unless the same were made and executed with the assent of three-fourths in number and value of the creditors of such person.

**Entry of vacatur on margin of record of deed declared void. 102.** When any deed is declared void under the provisions of this Law, the Court shall direct the Deputy Keeper of the Records to enter a note of such decree on the margin of any deed to which it relates that may be recorded in the Island Record Office.

**Proceeds of executions against debtor. 103.** When the goods of a person have been taken in execution in respect of a judgment and sold, the bailiff or officer executing the process shall, if he have notice of a petition filed by or against such person, hold the balance of the proceeds of the sale, after deducting expenses, upon trust to pay the same to the trustee or other person entitled thereto under the petition.

**Imp. 53 & 54 Vic. c. 71, § 11.**

**Delivery of goods taken in execution but not sold. 104.** When the goods of a person have been taken in execution in respect of a judgment, and not sold before the bailiff or officer executing the process receives notice of the appointment of a receiver or trustee under a bankruptcy petition presented against or by such person, such officer shall forthwith after receipt of the notice deliver up such goods to the receiver or trustee, and the costs incurred by such officer in respect of such execution shall be paid out of the property of the debtor.

**Imp. 53 & 54 Vic. c. 71, § 11.**

**How far creditor entitled to benefit of execution or attachment against debtor. 105.** A creditor who has levied execution on the property of a debtor, or has made an attachment thereof, shall not be entitled to retain the benefit of such execution or attachment unless and except in so far as he has, before the filing of a petition against or by such debtor, enforced such execution by sale of the property seized, or enforced such attachment by actual possession of the moneys attached or (as the case may be) by sale of the property attached.

**Imp. § 45.**

**Distress for rent, landlord's rights. 106.** The landlord or other person to whom any rent is due from the debtor may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the debtor for the rent due to him from the debtor. If such distress for rent be levied after the commencement of the bankruptcy it shall be available only for one year's rent accrued due prior to the date of the provisional order. After notice received by or on behalf of the person making the distress of the appointment of a trustee or receiver no sale shall be made of the goods distrained, unless the Court shall otherwise order, except by the trustee or receiver, and the rent for which such distress is available, and the expenses thereof, shall be paid out of the proceeds of the sale.

**Imp. § 42.**

**Protection of certain bona fide transactions with bankrupt before petition filed. 107.** Subject to the provisions of this Law relating to the proceeds of the sale of



goods which have been seized, and to the provisions of this Law and every other Law avoiding, on the ground of their being fraudulent, certain settlements, conveyances, transfers, charges, payments, obligations, and judicial proceedings. The following dealings and transactions relating to the property of the debtor, if they take place before the filing of the petition, shall be valid notwithstanding any prior act of bankruptcy committed by the debtor, that is to say, every payment by the debtor to any of his creditors and every payment or delivery to him, and every conveyance, sale, or assignment for valuable consideration by and with him, and every execution and attachment against his goods and chattels executed, and levied by seizure and sale: Provided that the person to, by, or with whom such payment, delivery, conveyance, assignment, sale, contract, dealing, or transaction, was made, executed, or entered into, or at whose suit or on whose account every such execution or attachment was issued, had not at the time of such payment, delivery, conveyance, assignment, contract, dealing, or transaction, or at the time of the executing or levying of such execution or attachment, or at the time of the making of any sale thereunder, notice of any act of bankruptcy committed by the debtor and available for adjudication against him at the time of the filing of the petition.

Imp. § 49.

*Debts provable against the debtor's estate.*

**What debts are and what are not provable against debtor's estate. 108.** Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise shall not be provable under a bankruptcy petition, and no person having notice of any act of bankruptcy available for adjudication against the debtor shall prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice, unless the Court is of opinion that the property of the debtor has been benefited or increased, or that his debts or liabilities have been diminished, by the payment of the money or execution of the contract upon which the debt or liability sought to be proved has arisen. Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the provisional order, or to which he may become subject by reason of any obligation incurred previously to the date of the order, shall be deemed to be debts provable under a bankruptcy petition in pursuance of this Law.

Imp. § 37.

**Estimate of debts of uncertain value. 109.** An estimate shall be made by the trustee, according to the rules of Court for the time being in force so far as the same may be applicable, and where they are not applicable at the discretion of the trustee, of the value of any debt or liability provable which by reason of its being subject to any contingency or contingencies or for any other reason does not bear a certain value.

Imp. § 37.

**Liability defined. 110.** Liability shall for the purposes of this Law include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether such breach does or does not occur, or is or is not likely to occur, or capable of occurring, before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of money or money's worth, whether such payments be as respects amount, fixed or unliquidated, and payable in one sum or by instalments, or periodical payments; as respects time, present or future, certain or dependent on any one contingency, or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or assessable only by a jury, or as matter of opinion.

Imp. § 37.

**Interest on debts. 111.** Interest on any debt provable under this Law may be allowed under the same circumstances in which interest would have been allowable by a jury if an action had been brought for such debt.

**Secured creditors, how they may prove. 112.** A secured creditor may on giving up his security prove for his whole debt, or he may prove for any balance due to him after realizing or giving credit for the value of his security in manner and at the time prescribed. A secured creditor not complying with the foregoing conditions shall be excluded from proof.

Imp. Sched. II, §§ 9—16.

**Proofs in respect of distinct contracts in different capacities. 113.** If the debtor is at the date of the provisional order liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor and also as a joint contractor, the circumstances that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts against the properties respectively liable upon such contracts.

**Mutual dealings and set off. 114.** Where there have been mutual credits, mutual debts, or other mutual dealings, between the debtor and any person having a debt provable under the bankruptcy petition, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of such account, and no more, shall be proved or paid on either side respectively.

Imp. § 38.

**Landlord may prove for residue of rent not recoverable by distress. 115.** A landlord or other person to whom rent is due from the debtor, and who has been prevented from recovering the full amount of such rent by the operation of section 106 of this Law, may prove for so much of the rent as by reason of that section he was prevented from recovering.

Imp. § 42.

**May prove for proportion of rent to date of provisional order. 116.** When any rent or other payment falls due at stated periods, and the provisional order is made at any time other than one of such periods, the person entitled to such rent or payment may prove for a proportionate part thereof up to the date of such order as if such rent or payment grew due from day to day.

#### *Distribution of assets and dividend.*

**Notice of dividend. 117.** Before declaring a dividend the trustee shall cause notice to be gazetted, stating the day on which the dividend is intended to be declared, and, except as hereinafter provided, those debts only in respect of which proof has been made or tendered before that day shall be allowed to participate in the dividend.

Imp. § 58.

**Calculation and distribution of dividend. 118.** In the calculation and distribution of a dividend it shall be obligatory on the trustee to make provision for debts provable under this Law appearing from the debtor's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, and also for debts provable under the bankruptcy petition which have been notified to him in manner prescribed, and are subject of claims not yet determined, and on such debt being established the creditor shall be entitled to receive the dividend reserved thereon.

Imp. § 60.

**Rights of creditors who prove after dividend. 119.** Creditors may prove their debts in manner prescribed, and creditors who have not proved their debts before the declaration of any dividend or dividends shall, on the occasion of the next dividend being declared, be entitled to be paid any dividend or dividends they have failed to receive before any moneys are made applicable to the payment of any other dividend or dividends, but they shall not be entitled to disturb the distribution of any dividend declared before their debts were proved, by reason that they have not participated therein.

Imp. § 61.

**Final dividend, notice thereof. 120.** When all the property of the debtor from which any moneys available for division amongst the creditors can in the opinion of the trustee be reasonably expected to arise has been realized, the trustee shall declare a final dividend. Before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors of the debtor have been notified to him, and not established to his satisfaction, that if they do not establish such claims to the satisfaction of the Court, within a time to be limited for that purpose by the notice he will proceed to make final division of the property without regard to such claims. After the expiration of such time, or if the Court on application by any such claimant grants further time to him for establishing his claim, then on the



expiration of such further time the property of the debtor divisible amongst the creditors shall be divided amongst the creditors who have proved their debts without regard to the claims of any other persons.

Imp. § 62.

**How dividend recoverable if not paid.** 121. No action shall lie for a dividend, but if the trustee having control of any dividend refuses to pay the same the Court may if it thinks fit, order him to pay the same, and also to pay out of his own moneys interest thereon for the time that it is withheld, and the cost of the application.

Imp. § 63.

*Rules as to priority of payment.*

**Preferential debts.** 122. [As amended by Law No. 8 of 1885, § 3.] The debts hereinafter mentioned shall be paid in priority to all other debts, and between themselves such debts shall rank equally, and shall be paid in full unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves, that is to say: 1. All public taxes imposed by Law due from the debtor at the date of the provisional order not exceeding in the whole one year's taxes. 2. All wages or salary of any clerk or servant in respect of services rendered to the debtor during four months next preceding the date of the provisional order, not exceeding fifty pounds. 3. All wages or lawful dues of any immigrant labourer under indenture according to the immigration laws; and 4. All wages of any other labourer or workman in respect of services rendered to the debtor during four months next preceding the date of the provisional order. Save as aforesaid, all debts provable under the petition shall be paid *pari passu*.

**Creditors of a debtor's firm postponed to separate creditors of debtor.** 123. If a provisional order is made against one member of a partnership, a creditor to whom that partner is indebted jointly with the other partners of the firm or any of them shall not receive any dividend out of the separate property of the first mentioned partner until all the separate creditors have received the full amount of their respective debts.

Imp. § 40; 51 & 52 Vic. c. 62, § 1.

*As to payments to the debtor.*

**Allowances to debtor for support or services.** 124. The trustee may from time to time make such allowance as he thinks just to the debtor out of his property for the support of the debtor and his family, or in consideration of his services if he is engaged in winding-up his estate, but such allowance may be revised by the Court, and where no allowance has been made the Court may on cause shown make an allowance.

Imp. § 64.

**Surplus of estate payable to debtor.** 125. The debtor shall be entitled to any surplus remaining after payment of his creditors, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

Imp. § 65.

*Supplemental Provisions.*

*As to joint debtors.*

**Petition against partners or joint debtors.** 126. Any creditor whose debt is sufficient to entitle him to present a petition against all the members of a partnership, or against all of several joint debtors, may present such petition against any one or more of such persons without including the others.

Imp. § 110.

**Dismissal of petition against some respondents only.** 127. Where there are more respondents than one to a petition the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

Imp. § 111.

**Power to extend provisional order against partners to their separate estates.** 128. Where a provisional order has been made against all the members of a partnership, or against several joint debtors, the operation of such order shall in the first instance be limited to the debt jointly due from such partners or debtors, but the Court may, on sufficient cause being shewn by any joint or separate creditor within the prescribed time after the making of the order, direct the order to apply to the

separate debts and properties of the partners or debtors, or of some or one of them, and such order shall have effect accordingly: Provided that nothing herein shall prejudice or affect any disposition made by a debtor in good faith, and for valuable consideration, of or in reference to the separate property to which such provisional order is so directed to apply, in the interval between the date of the provisional order and the date when such direction has been given.

**Creditor of partners may prove for certain purposes his claims in proceedings against one partner.** 129. When a provisional order is made against one member of a firm or partnership, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting, and may vote at a meeting of creditors.

**Trustee's right of action when debtor is member of a firm.** 130. Where the debtor is a member of a partnership, the trustee administering his estate under the provisions of this Law may, when authorized by the Court, bring or prosecute any action in the name of himself and of the debtor's partner. In such case any release by such partner of the debt or demand to which the action relates shall be void. Before applying to the Court for authority to bring such action the trustee must give notice to the partner, who may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and shall if no benefit be claimed by him therefrom be indemnified against costs in respect thereof as the Court directs.

Imp. § 113.

**As to debtor's joint contracts.** 131. Where a debtor is a contractor in respect of any contract jointly with any other person or persons, such person or persons may be sued, and if no action be pending at the suit of the trustee in respect thereof may sue in respect of such contract without the joinder of the debtor.

Imp. § 114.

**Provisional order when a member of a firm is absent or lunatic.** 132. When a provisional order has been made against a member or members of a firm, and any one or more other persons being a member or members of the same firm is or are out of this Island, or of unsound mind, the Court shall have jurisdiction, after giving the prescribed notices, to make a provisional order for the administration of the joint property of the members of the firm, on its being proved to the satisfaction of the Court that the firm are unable to pay their debts, but it shall not be lawful to adjudge any member a bankrupt under this section. Upon such order being made, the property of the firm shall vest in the trustee, and shall be administered in all respects as if a bankruptcy petition had been presented and a provisional order had been made in the first instance against all the members of the firm.

*As to discovery of debtor's property.*

**Power of Court to summon debtor and other persons, and to require production of documents as to debtor's affairs.** 133. At any time after the presentation of a petition, the Court may summon before it the debtor, or his wife, or any person known or suspected to have in his possession any of the property of the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, or his property, his trade, or dealings, or affairs, and the Court may require any such person to produce any documents in his custody or power relating to the debtor, or his property, trade, or dealings, or affairs; and if any person so summoned, after having been tendered a reasonable sum, refuses to produce such documents, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may by warrant cause such person to be apprehended and brought before it for examination.

Imp. § 27.

**And to examine witnesses.** 134. The Court may examine upon oath, either by word of mouth or by written interrogatories any person so summoned or brought before it, or any person being present before the Court, concerning the debtor, or his property, trade, or dealings or affairs.

Imp. § 27.

**And to order payment of admitted debt.** 135. If any person on examination before the Court admit that he is indebted to the debtor, the Court may on the application of the trustee order him to pay to the trustee, at such time and in such manner as



to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.

Imp. § 27. See Law No. 24 of 1892, § 17.

**Power to seize debtor's property, and to search for same. 136.** Any person acting under warrant of the Court may seize any property of the debtor divisible amongst his creditors under this Law and in the debtor's custody or possession, or in that of any other person, and with a view to such seizure may break open any house, building, or room, of the debtor where the debtor is supposed to be, or any building or receptacle of the debtor where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that the property of the debtor is concealed in a house or place not belonging to him the Court may, if it thinks fit, grant a search warrant to any constable or prescribed officer of the Court, who may execute the same according to the tenor thereof.

Imp. § 51.

**Arrest of debtor in certain events. 137.** At any time after the presentation of a petition: If it appears to the Court that there is probable reason for believing that the debtor is about to leave the Island, or to quit his place of residence, with a view of avoiding examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings under the petition, or that he is about to remove his property with a view of preventing or delaying such property being placed under the control or possession of the receiver or trustee, or that he has concealed or is about to conceal or make away with any of his property, or any books, documents, or writings, which might be of use to his creditors in the course of the proceedings, or If the debtor knowing that a petition has been filed removes any property in his possession above the value of five pounds without the leave of the receiver or trustee, or without good cause shown fails to attend any examination ordered by the Court, the Court may cause the debtor to be arrested, and imprisoned in such convenient prison as the Court may direct, and any books, papers, or property in his possession to be seized and safely kept until such time as the Court may order.

Imp. § 25.

**Dealing with letters addressed to debtor. 138.** The Court, upon the application of the trustee may from time to time order that for such time as the Court thinks fit, not exceeding three months from the date of such order, post letters addressed to the debtor at any place or places mentioned in the order shall be re-directed by the Postmaster for Jamaica, or the officers acting under him, to the trustee or otherwise as the Court directs, and the same shall be done accordingly.

Imp. § 26.

### *Miscellaneous Provisions.*

#### *Provisions relating to evidence.*

**Certified copies of entries in trustee's books. 139.** Copies, authenticated by the signature of the trustee, of any entries in the books kept by him with respect to any estate or trust vested in or administered by him under this Law shall be admissible in evidence, and shall have the same effect in evidence in all respects, as the originals from which such copies were made.

**Signature of trustee. 140.** In all legal proceedings judicial notice shall be taken of the signature of the trustee; but any Court or Judge may require such signature to be proved in the ordinary way if it is doubtful to such Court or Judge whether the alleged signature is genuine.

**Evidence of documents in proceedings under this Law. 141.** Any bankruptcy petition or copy thereof, any order or copy of an order made by any Bankruptcy Court, any certificate or copy of a certificate made by a Bankruptcy Court, any deed of arrangement or copy thereof, and any other instrument or copy of an instrument, affidavit, or document, made or used in the course of any proceedings under this Law, may, if any such document or instrument or copy appears to be sealed with the seal of any Bankruptcy Court, or purports to be signed by the Judge, or certified to be a true copy by the Registrar of any Bankruptcy Court, be receivable in evidence in all legal proceedings whatever.

Imp. § 134.

**Depositions of deceased persons. 142.** In the case of the death of the debtor or his wife, or of a witness whose evidence has been received by any Bankruptcy

Court in any proceeding under this Law, the deposition of the person so deceased purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

Imp. § 136.

**Gazette notice conclusive evidence of certain facts.** 143. The production of a *Gazette* containing a *Gazette* notice of a provisional order, or of an absolute order for bankruptcy, shall be conclusive evidence in legal proceedings that the provisional order was duly made, or that the debtor against whom the absolute order has been made has been duly adjudged bankrupt, and also of the date of such orders.

Imp. § 132.

*Provisions relating to legal proceedings.*

**Service on trustee.** 144. Documents in any legal or other proceeding by or against the trustee may be served by being left at his office, and such service shall have the same effect as if it had been made personally.

Imp. § 142.

**Notice of action against trustee.** 145. [As amended by Law No. 38 of 1911, § 6.] No action or other proceeding shall be commenced against the trustee, as such, unless a month's notice, stating the cause thereof, the name and address of the person bringing the action or other proceeding, and the name and address of his attorney (if any) has been given to the trustee, and if no action or proceeding shall have been commenced against the trustee in terms of such notice before the expiration of sixty days from the service thereof the said notice shall lapse and cease to be effective.

**Exemptions from stamp duty.** 146. Every deed, conveyance, assignment, surrender, admission, or other assurance, relating solely to freehold or leasehold property, or to any mortgage, charge, or other incumbrance on, or any estate, right, or interest in, any real or personal property which is part of the estate of any debtor under this Law, and which, after the execution of such deed, conveyance, assignment, surrender, admission, or other assurance, either at Law or in equity, is or remains the property of the debtor or trustee and every power of attorney, proxy, paper, writs, order, certificate, affidavit, bond, or other instrument or writing, relating solely to the property of any such debtor, or to any proceeding under this Law, shall be exempt from stamp duty (except in respect of fees under this Law).

Imp. § 144.

**Irregularities not to invalidate proceedings.** 147. Proceedings under this Law shall not be invalidated by any irregularity, unless the Court before which an objection is made to such proceeding is of opinion that substantial injustice has been caused by such defect or irregularity, and that such injustice cannot be remedied by any order of such Court.

Imp. § 143.

**Actions in respect of debtor's things in action assigned.** 148. Any person to whom any thing in action belonging to the debtor is assigned in pursuance of this Law may bring or defend any action relating to such thing in action in his own name.

*As to apprenticeship.*

**As to discharge of indenture of apprentice of debtor, and preferential allowance thereon.** 149. Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articulated clerk to the debtor, the provisional order shall, if the debtor or apprentice or clerk give notice in writing to the trustee either or receiver to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of such apprentice or clerk to the debtor as a fee, the trustee or receiver may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as such trustee or receiver, subject to an appeal to the Court, thinks reasonable, out of the debtor's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf and to the time during which he served with the debtor under the indenture or articles before the date of the provisional order, and to the other circumstances of the case.

Imp. § 41.

*Application of Bankruptcy Law to case of married woman.*

**How far married woman subject to this Law.** 150. A married woman who has contracted any debts otherwise than as the agent of her husband or some other person, shall be liable in respect of her separate estate to all the provisions of this



Law, and shall be entitled in respect of her debts to the benefit of all the provisions of this Law.

Imp. § 152.

*As to the annulling or revoking of orders in bankruptcy.*

**Power to revoke orders, etc. Effect thereof. 151.** The Court may at any time, for sufficient reason, revoke a provisional order for bankruptcy, or annul an adjudication; but in such case all sales and dispositions of property and payments duly made, and all acts theretofore done, by the trustee or any person acting under his authority, or by the Court, shall be valid, but the property of the debtor shall in such case vest in such person as the Court may appoint, or in default of any such appointment revert to the debtor for all his estate or interest therein, upon such terms and subject to such conditions, if any, as the Court may declare by order. A copy of the order of revocation or annulment, unless such order has been made on cause shewn by the debtor in the first instance, may be forthwith published in the *Gazette* and advertised locally in the prescribed manner, and the production of a copy of the *Gazette* containing such order of revocation or annulment shall be conclusive evidence of the fact of such revocation or annulment, and of the terms of the order.

Imp. § 35.

**Effect of revocation of a provisional order. 152.** The revocation of a provisional order shall operate as a revocation of the appointment of the trustee under the petition, and shall revive the remedy of any creditor against the property or person of the debtor that was suspended or stayed by the order.

*Fraudulent Bankruptcy.*

*Crimes against Bankruptcy Laws.*

**Crimes against the bankruptcy Laws, and where triable. 153.** [As amended by Law No. 38 of 1911, § 7.] Any person against whom a provisional order or an absolute order in bankruptcy has been made and has not been revoked shall in each of the cases following be guilty of a misdemeanour, and shall be liable, on conviction, to imprisonment with or without hard labour for any term not exceeding one year, that is to say: 1. If he does not to the best of his knowledge and belief fully discover to the trustee administering his estate for the benefit of his creditors all his **property**, real and personal, and how, and to whom, and for what consideration, and when, he disposed of any part of his property, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family. 2. If he does not deliver up to the trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud. 3. If he does not deliver up to the trustee, or as he directs, all books, documents, papers and writings, in his custody or under his control, relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud. 4. If since the presentation of the petition by or against him, or within six months before such presentation, he has concealed or removed any part of his property to the value of ten pounds or upwards, or concealed any debt due to or from him, unless the jury is satisfied that he had no intent to defraud. 5. If he makes any material omission in any statement required under this Law relating to his affairs, unless the jury is satisfied that he had no intent to defraud. 6. If, knowing or believing that a false debt has been proved by any person under the bankruptcy proceedings, he fails for the period of a month to inform the trustee thereof, unless the jury is satisfied that he had no intent to defraud. 7. If after the presentation of the petition by or against him he prevented the production of any book, document, paper, or writing, affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law. 8. If after the presentation of the petition, or within six months before such presentation, he has concealed, destroyed, mutilated, or falsified, or has been privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law. 9. If, either before or after the presentation of the petition, he made or was privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law. 10. If

after the presentation of the petition, or within six months before such presentation, he has parted with, altered, or made any omission in, or has been privy to the parting with, altering, or making any omission in, any document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud. 11. If after or within six months before the presentation of the petition he has attempted to account for any part of his property by fictitious losses or expenses. 12. If within six months before the presentation of the petition he by any false representation or other fraud has obtained any property on credit, and has not paid for the same. 13. If within six months before the presentation of the petition he obtained under the false pretence of carrying on business and dealing in the ordinary way of his business any property on credit, and has not paid for the same, unless the jury is satisfied that he had no intent to defraud. 14. If within six months before the presentation of the petition he has pawned, pledged, or disposed of otherwise than in the ordinary way of his business any property which he had obtained on credit and had not paid for, unless the jury is satisfied that he had no intent to defraud. 15. If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to any agreement with reference to his affairs, or his bankruptcy or liquidation. 16. If after or within six months before the presentation of the petition he has quitted this Island and taken with him, or attempted or made preparation for quitting this Island and for taking with him, any part of his property, to the amount of twenty pounds, or upwards, which would by law be divisible amongst his creditors under the bankruptcy, unless the jury is satisfied that he had no intent to defraud. 17. If in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud. 18. If he has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery or transfer of, or any charge on his property. 19. If he has, with intent to defraud his creditors, concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him. Misdemeanours under this section shall not be triable in a District Court.

Imp. § 163.

### *Schedule.*

[As amended by Law No. 11 of 1888. § 2.]

Law 25 of 1871.

Law 27 of 1871.

Law 20 of 1872.

Law 17 of 1877.

| Whole Law, except sections, 64, 65, 66, 68.

Whole Law.

Whole Law.

| So much of (section 4)<sup>1</sup>) as begins with the words "and until such Rules" and ends with the words "District Court shall be the Official Trustee."

**d) No. 21 of 1882. A Law to amend the Bankruptcy Law, 1879 (18th November, 1882).**

[See notes to Law No. 33 of 1879, §§ 6 and 7.]

**e) No. 8 of 1885. The Bankruptcy Law, 1879, Amendment Law, 1885 (26th April, 1885).**

[1—3. Amend Law No. 33 of 1879, §§ 92 and 122, and are there incorporated.]

<sup>1</sup>) Words in brackets substituted by sec. 12 of Law 11 of 1888.



**f) No. 11 of 1888. The Bankruptcy Law, 1879, Amendment Law, 1888 (22d May, 1888).**

**Extension of power to avoid certain voluntary settlements, etc., as against the representatives of deceased settlers whose estates are insolvent. 1.** In the administration by the Court of the assets of any person dying after the passing of this Law, it shall be lawful for the Court, on the petition of any creditor or creditors of such deceased person whose claim, or claims together, against the estate would have been sufficient to support a petition in bankruptcy against such person had he not died, and on proof that the assets of such person were at the time of his death insufficient to pay his debts and liabilities in full, to order that any settlement of property made by such deceased person within the meaning of section 99 of the said Law of 1879, and except as therein excepted, or any conveyance or transfer of property or charge thereon, or any payment, obligation, or judicial proceeding, made, incurred, taken, or suffered, by such person, — he being, at the time of making, taking, paying, or suffering, the same, unable to pay his debts as they become due from his own moneys, — in favour of any creditor or any person in trust for any creditor, with a view of giving such creditor preference over the other creditors, and which settlement, conveyance, transfer, charge, payment, obligation or judicial proceeding, would have been void against the trustee in bankruptcy if a provisional order had taken effect against such deceased person at the moment of his death, shall be void as against the executor, administrator, receiver, or other person, charged with the administration of the assets of such deceased person: Provided that such petition shall be presented within six months after the death of such deceased person: Provided also that the proper funeral and testamentary expenses, incurred by the legal personal representative in and about the deceased person's estate, shall be deemed a preferential debt, and the payment thereof by the legal personal representative shall be valid, or, if the same have not been paid at the time of the making of any order under this section, they shall be payable in full out of the debtor's estate, in priority to all other debts: Provided also that nothing herein shall be deemed to make the legal personal representative of such deceased person personally liable in respect of any payment made, or act or thing done, in good faith before the date of the order for the administration of the assets of such person by the Court.

**Voluntary settlement defeasible by settler to be void as against trustee in bankruptcy. 2.** Any settlement (within the meaning of the said section 99, and except as therein excepted) of real estate which would, under the provisions of the Statute 27 Elizabeth, c. 4, be void as against a subsequent purchaser for valuable consideration, shall, on a provisional order in bankruptcy taking effect against the settler, be void as against the trustee in bankruptcy; and the property comprised in such settlement shall vest in the trustee in like manner, and to the same extent, as if he had purchased the same from the settler for valuable consideration.

**Voluntary expenditure of moneys on the property of another to be deemed a settlement if order in bankruptcy takes effect within two years against the person so expending the same. 3.** The voluntary expenditure of any moneys by any person in building or making permanent improvements on the property of another shall be deemed to be a settlement of such moneys on such other person within the meaning of section 99 of the said Law; and if a provisional order in bankruptcy, as mentioned in the said section 99, take effect against the person making such expenditure within two years from the date of such expenditure, the trustee shall be entitled to recover, from the owner of the property benefited by such expenditure, an amount equal to the increase in the value of such property brought about by such expenditure, and shall have a lien on such property for such amount, and on the proceeds thereof if the same have been sold: Provided always that such lien shall not prevail against a bona fide purchaser for valuable consideration who at the time of the purchase, either had no notice of such expenditure as aforesaid, or if he had such notice had no notice of an act of bankruptcy, on the part of the person making the same, available for adjudication against him.

**Any creditor may oppose discharge of a bankrupt. 4.** In amendment of section 59 of the said Law, it is hereby provided that any creditor may oppose the discharge of a bankrupt, and shew cause why such discharge should be refused or post-

poned, or made subject to conditions, whether the trustee concur in such opposition or not.

See §§ 3 and 4 of Law 24 of 1892.

**Power to grant discharge subject to conditions, extended.** 5. And whereas doubts and differences have arisen with reference to the construction to be placed on the last paragraph of section 60 of the said Law, it is hereby provided that it shall under all circumstances be lawful for the Court in granting any order of discharge to a bankrupt, to grant the same subject to such of the conditions mentioned in section 61 of the said Law as appear to be just and reasonable under the circumstances, although it may not appear that the debtor has done any of the things mentioned in section 60 of the said Law, or section 7 of this Law, so as to justify the Court in refusing or suspending the said order.

See note to § 4, *supra*.

**Bankruptcy of a firm, or of one or more partners, effect thereof on the partnership assets and on the property of each partner.** 6. When a provisional order has been made against a firm of partners, all the separate property of each of the bankrupts, as well as all the joint property of the partnership, shall immediately pass to and vest in the trustee. Where a provisional order has been made against one partner in a firm, there shall pass to the trustee as well the separate property of such partner as the share to which, as between himself and his partners, the bankrupt is entitled in the assets of the firm after paying or providing for all the liabilities. For the purpose of ascertaining such share, the accounts of the firm shall be taken in such manner as the Court may direct. In the case of bankruptcy of partners, or of any member of a partnership firm, the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the rights and interests of each partner in the joint estate.

**Section 60 of Law 33 of 1879 enlarged.** 7. In furtherance of section 60 of the said Law, it is hereby provided that if the Court, on an application to grant to any debtor an order of discharge, is of opinion: a) That the debtor has failed to deliver up to the trustee all books, papers, documents, or writings, in his custody or under his control, or to disclose the name of the person or persons in whose custody or under whose control the same may be, or b) That he has wilfully or negligently omitted to keep proper books of account, whether or not such omission has been with intent to conceal the true state of his affairs, or c) That he has failed to satisfy the Court as to the cause of his insolvency, or d) That his insolvency has arisen from rash or imprudent conduct as a trader, or e) That he has wilfully failed to perform any of the duties cast upon him by section 32 of the said Law, it may refuse an order of discharge, or may suspend the same from taking effect for such time as it thinks fit.

Imp. 53 & 54 Vic. c. 71, § 8. See note to § 4, *supra*.

**As to the public examination of bankrupts, and as to evidence given thereat.** 8. On the public examination of the debtor under section 54 of the said Law, the debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times.

Imp. § 17.

**Creditors to extent of twenty pounds may proceed in bankruptcy against their debtors.** 9. Section 8 of Law 33 of 1879 shall be and the same is hereby amended by substituting twenty pounds for fifty pounds in the said section as the minimum debt sufficient to authorize a creditor or creditors to present a bankruptcy petition under the said Law.

**Debtor may apply to the Resident Magistrate's Court to be declared bankrupt.** 10. Nothing in section 6 of Law 17 of 1877 shall be deemed to prevent any Resident Magistrate's Court from adjudicating a debtor bankrupt on his own petition: Provided that where any debtor presents any such petition he shall file along with it an affidavit of his belief that the whole of his estate is below the value of two hundred pounds.



[11—12. Amend Law No. 33 of 1879, and are there incorporated.]

**This Law incorporated with Law 33 of 1879.** 13. This Law and the *Bankruptcy Law, 1879*, (No. 33 of 1879) shall be taken and read together as one Law.

**g) No. 24 of 1892. The Bankruptcy Laws Further Amendment Law, 1892 (25th May, 1892).**

**Proceedings in bankruptcy against estate of a deceased debtor.** 1. 1. Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against such debtor, had he been alive, may present to the Court a petition praying for an order for the administration of the estate of the deceased debtor according to the Law of Bankruptcy. 2. Upon notice being given to the legal personal representative of the deceased debtor, the Court may, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may upon cause shown dismiss such petition, with or without costs. 3. An order of administration under this section may be made at any time after the grant of probate or letters of administration. 4. A petition for administration under this section shall not be presented to the Court after proceedings have been commenced for the administration of the deceased debtor's estate; but the Court in which such proceedings have been taken may, in any such case in which it is made to appear that the estate is insufficient to pay its debts, make an order for the administration of the estate of the deceased debtor in bankruptcy, and thereupon the like consequences shall ensue as under an administration order made on the petition of a creditor. 5. Upon an order being made under this section for the administration of a deceased debtor's estate, the property of the debtor shall vest in the trustee in bankruptcy, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of the Laws of Bankruptcy. 6. In the administration by the trustee in bankruptcy of the assets of any person pursuant to an order under this section, the Court shall, on the petition of the trustee, have and exercise all the powers which, in the case of administration of the assets by the Court, it would have, under section 1 of Law 11 of 1888, on the petition of a creditor or creditors. 7. With the modifications hereinafter mentioned, all the provisions of the *Bankruptcy Law, 1879*, relating to the administration of the property of the bankrupt shall, so far as the same are applicable, apply to the case of an administration order under this section, in like manner as to an order of adjudication under the said Law. 8. In the administration of the property of the deceased debtor under an order made under this section, the trustee shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order and be payable in full, out of the debtor's estate, in priority to all other debts. 9. If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the trustee, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by the Bankruptcy Law in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be ordered by the Court. 10. Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the trustee; save as aforesaid, nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration. 11. Unless the context otherwise requires, "Court" in this section means any Court in which the deceased debtor might immediately before his death have been adjudicated bankrupt.

Imp. § 125.

**Report of trustee, its purport. Ad interim report. Further and full report.** 2. It shall be the duty of the trustee, as soon as possible after the close of the public exa-

mination of the debtor, to make a report as to the state of the debtor's affairs, and as to the conduct of the debtor both before and during the bankruptcy, and shall note particularly any matters which in his judgment might constitute offences under the *Bankruptcy Law, 1879*, or any other Law relating to bankruptcy, or which would justify the Court under this Law in refusing, suspending, or qualifying, an order for the debtor's discharge. Such report may be made as to the bankrupt's affairs and estate, although, if the estate has not been fully administered, the trustee may be unable to speak precisely as to details: Provided that in such a case, if it appear to the Court, or the Judge before whom the debtor's examination was held, material to do so with reference to an application on the part of the debtor for an order of discharge, it shall be lawful for the Court or Judge aforesaid to order the trustee to make a further and exact report, and in any case where the estate of the debtor shall have been fully administered, the trustee shall make a further and full report to the Court as to the assets and liabilities of the debtor, and as to the dividend paid.

**Certain sections of Laws not applicable to future bankrupts.** 3. Section 60 of the *Bankruptcy Law, 1879*, and sections 4, 5 and 7, of Law 11 of 1888, shall cease to apply in the case of any person adjudicated bankrupt after the passing of this Law, and the provisions of the following section shall be deemed to be substituted for the same, and to be applicable to any such bankruptcy.

**Provisions substituted for those sections in case of persons adjudicated bankrupt hereafter. Facts on proof of which Judge may refuse or suspend order of discharge or make it conditional.** 4. 1. The debtor may, at any time after the filing of the report aforesaid, apply to the Judge hereinafter mentioned to appoint a day for hearing his application for an order of discharge. The Judge shall thereupon appoint a day and place for hearing such application. The prescribed notice of the time and place appointed shall be given in the prescribed manner. Any such application for an order of discharge shall be made in open Court, before the Judge before whom the examination of the debtor was held unless such Judge is ill, absent from the Island or otherwise incapacitated, in which case it shall be made (in the case of the Supreme Court) before another Judge, or, (in the case of the Resident Magistrate's Court,) before the locum tenens or successor of such Judge: Provided that in the case last aforesaid, it shall be lawful for such other Judge, or locum tenens or successor, to use the notes of the Judge before whom the examination was held, and to take such action upon them as the Judge himself might have taken under the provisions of this Law. 2. The trustee or any creditor may oppose the discharge, and may show cause why it should be refused, or postponed, or made subject to conditions. 3. Whether any such opposition is made or cause shown or not, the Court shall take into consideration the report of the trustee aforesaid, and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the debtor, or with respect to his after-acquired property: Provided that the Judge shall refuse the discharge in all cases where the debtor has been convicted of a misdemeanour under the *Bankruptcy Law, 1879*, or any other misdemeanour connected with his bankruptcy, or any felony connected with his bankruptcy, unless for special reasons to be stated in the order the Judge otherwise determines; and further if, on a consideration of the report of the trustee, or of representations made by the trustee or any creditor on the hearing of the application, and of the Judge's notes of the examination of the debtor, and of the evidence (if any) adduced at the hearing of the application, and after hearing the debtor in support of the same, it shall appear to the Judge that any of the facts hereinafter mentioned has been proved, the Judge shall either: a) Refuse the discharge, or b) Suspend the discharge for a period of not less than two years, or c) Suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors, or d) Require the debtor, as a condition of his discharge, to consent to judgment being entered against him by the trustee for any balance, or part of any balance, of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance, or part of any balance, of the debts to be paid out of the future earnings or after-acquired property of the debtor in such manner and subject to such conditions as the Judge may direct; but execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the debtor has since his discharge acquired property or income available towards payment of his debts: Provided that if at any time



after the expiration of two years from the date of any order made under this section the debtor shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit. 4. The facts hereinbefore referred to are: a) That the debtor's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the Judge that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible; b) That the debtor has omitted to keep such books of account as are usual and proper in the business carried on by him, and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy; c) That the debtor has continued to trade after knowing himself to be insolvent; d) That the debtor has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it; e) That the debtor has failed to account satisfactorily for any loss of assets, or for any deficiency of assets to meet his liabilities; f) That the debtor has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs; g) That the debtor has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him; h) That the debtor has, within three months preceding the date of the act of bankruptcy, incurred unjustifiable expense by bringing a frivolous or vexatious action; i) That the debtor has, within three months preceding the date of the act of bankruptcy, when unable to pay his debts as they become due, given an undue preference to any of his creditors; j) That the debtor has, within three months preceding the date of the act of bankruptcy incurred liabilities, with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities; k) That the debtor has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors; l) That the debtor has been guilty of any fraud or fraudulent breach of trust; m) That the debtor has carried on trade by means of fictitious capital; n) That he is indebted for damages recovered in any action for malicious injury to the person, reputation, or property of the plaintiff therein; o) That he has failed to deliver up to the trustee all books, papers, documents, or writings, in his custody or under his control, or to disclose the name of the person or persons in whose custody or under whose control the same may be; p) That his insolvency has arisen from rash or hazardous conduct as a trader; or q) That he has wilfully failed to perform any of the duties cast upon him by section 32 of Law 33 of 1879. 5. For the purposes of this section a debtor's assets shall be deemed of a value equal to ten shillings in the pound on the amount of his unsecured liabilities when the Court is satisfied that the property of the debtor has realized, or is likely to realize, or with due care in realization might have realized, an amount equal to ten shillings in the pound on his unsecured liabilities, and a report by the trustee shall be *prima facie* evidence of the amount of such liabilities. 6. For the purposes of this section the report of the trustee shall be *prima facie* evidence of the statements therein contained. 7. Notice of the appointment by the Judge of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the Judge may hear the trustee, and may also hear any creditor. At the hearing the Judge may put such questions to the debtor and receive such evidence as it may think fit. 8. The powers of suspending and of attaching conditions to a debtor's discharge may be exercised concurrently. 9. A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realization and distribution of such of his property as is vested in the trustee, and if he fails to do so he shall be guilty of a contempt of court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment, duly made or thing duly done, subsequent to the discharge but before its revocation.

**Law 33 of 1879, section 53 modified.** 5. Anything in section 53 of Law 33 of 1879 to the contrary notwithstanding, no deed of arrangement shall be taken into consideration by the Court until the debtor shall have submitted himself to the public

examination of the Court, and the trustee shall have made a report to the Court as provided by section 2 of this Law; and no such deed as aforesaid shall be confirmed by the Court unless on a consideration of the report aforesaid it shall appear to be in the interest of the creditors generally that it should be confirmed. All applications to confirm any deed as aforesaid shall be made to the Judge before whom the public examination of the debtor was held, save as in section 4 (1) provided in cases where the services of such Judge are not available.

**Appeal. 6.** Where any application is by this Law required to be made in the first instance to a single Judge, an appeal shall lie from his order to the full Court.

**Law 33 of 1879, section 8 enlarged. Further act of bankruptcy. 7.** In furtherance of section 8 of Law 33 of 1879, it is hereby enacted that the following act on the part of any debtor may be alleged as an act of bankruptcy as the ground of any bankruptcy petition against such debtor. (that is to say): That the debtor has, in Jamaica or elsewhere, made any conveyance or transfer of his property or any part thereof, or created any charge thereon, which would, under any Law relating to bankruptcy, be void as a fraudulent preference if he were adjudged bankrupt.

**Petition by debtor, requisites to order thereon. 8.** No petition by a debtor against himself shall be received unless accompanied by the statement required by section 11 of Law 33 of 1879, nor shall any order be made on any such petition, unless a copy thereof shall have been served on the trustee, and the trustee, admitting such service, shall apply for such order. Any order made on such petition shall be an absolute order.

**Power to trustee to sell bankrupt's land discharged from dower under order and terms protecting widows. 9.** When any debtor married before the passing of the *Dower Law, 1881*, (Law 33 of 1881,) shall at the time of his bankruptcy be possessed of any land subject to dower, it shall be lawful for the Court or any Judge thereof, to order that the same be sold freed and discharged from all claim to dower; and the said land may thereafter be sold freed and discharged from all claim to dower in respect of the same on the part of the debtor's wife: Provided that no such order shall be made except on the term that the trustee selling the same shall set apart and invest in such manner as the Judge making the order shall direct, and subject to the order of the Court, such portion of the purchase money as to the Court may seem right as a provision for the debtor's said wife in lieu of her right to dower: Provided, however, that no purchaser shall be concerned to enquire whether such direction has been given or not, or whether the same, if given, has been complied with.

[10. Amends Law No. 33 of 1879, § 8, and is there incorporated.]

**Warrant for seizure of debtor's property in possession of third party. 11.** In furtherance of section 135 of Law 33 of 1879, it is hereby provided that if any person, on examination before the Court as in the said section provided, admits having in his possession any property of the debtor vested in the trustee under this Law, the Court may, on the application of the trustee, grant a warrant for the seizure of the same: Provided that if on such examination as aforesaid such person claims a lien on such property, such warrant shall authorize the seizure of the same only on satisfaction of such lien.

[12. Amends Law No. 33 of 1879, § 66, and is there incorporated.]

**Law 33 of 1879. Proviso to section 31. 13.** Section 31 of the said Law shall be read subject to the proviso that, until the provisional order is made absolute, it shall be the duty of the trustee, as far as the nature of the property seized permits, to preserve all such property in such state as to permit of its being returned to the debtor in the condition in which it was when it was seized, in the event of the revocation of the provisional order: Provided always that it shall be lawful for the trustee, before any such order is made absolute, to make sales of any part of the debtor's stock-in-trade or other property, and take such other action in the interests of the debtor's estate, as in the ordinary course of the debtor's business may seem expedient.

**Incorporation of Laws. Short title. 14.** Laws 33 of 1879, 21 of 1882, 8 of 1885, 11 of 1888, and this Law, shall be taken and read together as one Law, and may be cited as the *Bankruptcy Laws, 1879—1892*.



**h) No. 38 of 1911. A Law further to amend Law 33 of 1879, entitled the Bankruptcy Law, 1879 (23d May, 1911).**

**Short title.** 1. This Law may be cited as *The Bankruptcy Amendment Law, 1911*, and shall be construed as one with *The Bankruptcy Law, 1879*, hereinafter called the principal Law, and any Law amending the same or construed therewith.

[2—9. Amend Law 33 of 1879, §§ 8, 55, 145, and 153, and are there incorporated.]

**Undischarged bankrupt obtaining credit to extent of £20 without informing creditor of his bankruptcy, guilty of misdemeanour.** 10. Where an undischarged bankrupt under the principal Law or any Law amending the same, or this Law obtains credit to the extent of £20 or more from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years, with or without hard labour.

## **B. Cayman Islands.<sup>1)</sup>**

### **Application of Law.**

**a) Imperial, 26 & 27 Vic. c. 31. An Act for the Government of the Cayman Islands (22d June, 1863).**

**Laws of Jamaica to have effect in Cayman Islands.** 5. Except as they may be inconsistent with Acts or resolutions, and subject to any such alterations as may be made by or by authority of the aforesaid Legislature of Jamaica, and to such Regulations as may from time to time be made, under authority of this Act, the laws now in force in Jamaica shall from the date of this Act be deemed to be in force in the said Islands, so far as the same shall be applicable to the circumstances thereof.

**b) Jamaica, Law No. 37 of 1893. The Cayman Islands Government Law, 1893 (12th May, 1893).**

**What laws of this Island in force in the Cayman Islands.** 3. The several Acts and Laws of this Island in force in the said Islands under the provisions of section 5 of said Act shall be, and be deemed to have been, the following and none other, that is to say: a) The several Acts and Laws enumerated and set forth in Schedule II, and b) Such of the Laws and Statutes of England prior to the first year of the reign of George II, as are in force in this Island, under the provisions of section 7 of 8 Vic. c. 16 by reason of their having been esteemed, introduced, used, accepted, or received as Laws in this Island, except in so far as the same have been repealed or altered by any Law of this Island.

**Laws specified in Schedule III in force in the Cayman Islands with certain exception.** 4. From and after the passing of this Law, except in so far as the same or any of them may be inconsistent with any Act, Resolution, or Law of the said Justice and Vestry, to which validity has been given either by the said Act or by this Law and subject to any alterations that therein may be made by, or by the authority of the Legislature of this Island, and to such Law as may from time to time be made by the Justice and Vestry of the said Islands under the authority of this Law, the several Acts and Laws of Jamaica, passed since the passing of the said Imperial Act, enumerated in Schedule III of this Law, shall be deemed to be in force in the said Islands, so far as the same shall be applicable to the circumstances thereof.

<sup>1)</sup> As in force 1st January, 1912.

*Schedule II.<sup>1)</sup>*

- 9 Geo. 4. c. 20. An Act rendering a written memorandum necessary to the validity of certain promises and engagements.  
 7 Vic. c. 52. An Act to prohibit the issue or reissue of bank or other promissory notes of less denomination than one pound.  
 16 Vic. c. 21. An Act to authorize limited partnerships throughout the Island.

*Schedule III.<sup>1)</sup>*

- 27 Vic. (Sess. II) c. 4. An Act for the incorporation and regulation of trading companies and other associations.  
 28 Vic. c. 42. An Act for the winding-up of companies.  
 Law 2 of 1872. A Law to amend the law relating to bills of lading.  
 Law 17 of 1872. A Law to amend the law affecting trade and commerce.  
 Law 21 of 1886. The Married Women's Property Law, 1886.  
 Law 23 of 1886. The Incorporated Companies and Societies Law, 1886.  
 Law 18 of 1888. The Merchandise Marks Law, 1888.  
 Law 22 of 1888. The Merchandise Marks Amendment Law, 1888.  
 Law 22 of 1889. The Married Women's Property Law, 1886. Amendment Law, 1889.

**C. Turks and Caicos Islands.<sup>2)</sup>****Companies.****a) No. 4 of 1890. An Ordinance to provide for the Incorporation, Regulation, and Winding-up of Trading Companies.**

[This Ordinance provides that the Jamaica Laws 27 Vic. Sess. II, c. 4 and 28 Vic. c. 42, relating to companies, shall be in force in the dependency. The words "Supreme Court" mean the Supreme Court of Turks and Caicos Islands, and "Island Secretary" mean Registrar of Deeds.]

**b) No. 2 of 1891. An Ordinance to amend Ord. No. 4 of 1890, entitled an Ordinance to provide for the Incorporation, Regulation, and Winding-up of Trading Companies.**

[This Ordinance adopts the Jamaica Law No. 23 of 1886, relating to companies. The words "Deputy Keeper of Records" mean the Registrar of Deeds, and "Record Office" mean the office of said Registrar.]

**Bills of Exchange.**

[By virtue of § 1 thereof, the Jamaica Law No. 32 of 1893, relating to bills of exchange, extends to the Turks and Caicos Islands. *Quære*, whether the Jamaica Law No. 7 of 1907 is extended.]

**Public Holidays.****No. 7 of 1901. An Ordinance to provide for the Establishment and Observance of certain Days as Public Holidays within the Dependency.**

[This Ordinance, which does not specifically refer to bills of exchange, declares the following days to be public holidays: New Year's Day, Good Friday, Easter Monday, 24th May, Christmas Day, 26th December, the birthday of the reigning sovereign. If New Year's Day, the 24th May, or the sovereign's birthday fall on a Sunday then the following Monday is also a holiday. If Christmas Day is on Sunday then the two following days are holidays.]

<sup>1)</sup> In so far only as it relates to topics within the scope of the present work. — <sup>2)</sup> As in force 1st January, 1912.



# Bahamas.

## Introduction.

### History and government.

The Bahama Islands were discovered by Columbus in 1492. The Carib inhabitants were all transported to Cuba and the islands were abandoned. English settlers from the Bermudas then found their way to the islands, occupying one of them (Eleuthera) in 1646, and another of them (New Providence) in 1666. In the reign of Charles II., several of the islands were by Royal Charter granted to a proprietary body. No effective settlement by a regular government was made and the islands continued nominally under the English Crown until 1781, when they were surrendered to Spain; but, at the conclusion of the war, they were recovered by Great Britain, which was confirmed in their possession by the Treaty of Versailles of 1783.

The Treaty of Peace between the sovereigns of Great Britain and Spain signed at Versailles the 3d September 1783, by Article 7 stipulated that His Catholic Majesty should restore to Great Britain the islands of Providence and the Bahamas without exception in the same condition they were in when they were conquered by the arms of the King of Spain.

These historic facts of original occupancy by English subjects, subsequent conquest by Spain and ultimate cession to England by the Treaty of Versailles raised some questions as to whether the common law prevailed: these doubts, however, were settled by the House of Assembly in 1799, which by the Act of Assembly (40 George III. c. 2) declared that the common law of England, in all cases where the same had not been altered by any of the Acts or Statutes thereafter enumerated, or by any Act or Acts of Assembly of those Islands (except so much thereof as had relation to the ancient feudal tenures, to outlawries in civil suits, to the wager of law or of bataille, appeals of felony, writs of attain, and ecclesiastical matters) was and of right ought to be in full force in those islands as the same then was in that part of Great Britain called England.

It was also declared that certain Acts of the Imperial parliament therein enumerated were and of right ought to be in full force and virtue within and throughout that Colony as the same would be if the Bahama Islands had been therein expressly named or as if the aforesaid Acts and Statutes had been made and enacted by the Grand Assembly of those Islands.

By this clause 207 English Statutes were declared to be in force in the Colony. These English Statutes have been varied by reductions and additions by subsequent Acts of the General Assembly.

From the foregoing exposition of the events up to the date of the Treaty of Versailles of 1783 it may be concluded that the Bahamas come into the category of colonies acquired by settlement and are accordingly subject to the English common law.

### Law in force.

**Contract.** The common law of England in respect of contracts prevails in the Colony. The capacity to contract is by Act of Assembly 47 Vic. c. 22 extended to a married woman, who can enter into and make herself liable to the extent of her separate property on any contract, and sue and be sued either in contract or in tort or otherwise in all respects as if she were a feme sole. In procedure for breach of contract the Court has power to decree specific performance. In determining questions arising out of contracts the judicial decisions of the English Courts are followed.

**Agency.** The law of agency follows the principle of the English common law that, whenever a person has a power as owner, or in his own right, to do a thing, he may do it by an agent. This capacity does not extend to infants, married women,

idiots, lunatics, and other persons not sui juris. Frauds by an agent, or other person in a fiduciary relation, are the subject of a penal statute. The Act of Assembly 28 Vic. c. 37, sections 64 to 75 inclusive, renders bankers, merchants, brokers, attorneys, or other agents liable to criminal procedure who, being entrusted with any money or security for the payment of money, either for safe custody, or with directions in writing as to the application or delivery thereof, for any purpose or to any person therein named, in violation of good faith and contrary to the terms of such direction, convert the same to their own use and benefit or the use and benefit of any person other than the person by whom they have been so entrusted.

Factors or agents are liable to criminal procedure who, being intrusted for the purpose of sale or otherwise with the possession of goods or documents of title, contrary to or without the authority of their principals, for their own use and benefit and in violation of good faith, pledge the same for money borrowed or received by them. But no factor or agent is liable to prosecution for pledging such goods or documents if the same are not made a security for payment of any greater sum of money than the amount which at date of such pledge was due and owing to the agent from his principal, together with the amount of any bill of exchange drawn by, or on account of, the principal and accepted by the factor or agent.

**Partnership.** The Partnership Act, 1904 (Act of Assembly 4 Edw. VII, c. 36) follows the Imperial Partnership Act 1890 (53 & 54 Vic. c. 39) with such slight variations as the institutions of the Colony require. In the Act the expression "Court" means the Supreme Court (Bahamas) and includes the Chief Justice sitting in Chambers. The following Acts of the Imperial Parliament ceased to be applicable to the Colony, viz., 19 & 20 Vic. c. 97, as regards section 4 (under which a guarantee to or for a firm ceases upon a change in the firm unless otherwise agreed), and 28 & 29 Vic. c. 86, an Act to amend the Law of Partnership.

The Act fixed the 1st January, 1905, as the date on which it should come into operation.

**Limited Partnerships.** The Partnership Limited Liability Act, 1861 (Act of Assembly 24 Vic. c. 13), enables partnerships with limited liability for the transaction of any mercantile, mechanical, or manufacturing business within the Colony, except banking or insurance, to be formed by two or more persons upon the terms, with the rights and powers therein provided. In any such partnership one or more of the members thereof are called the general partners, and are jointly and severally responsible, as partners are by law; and the other members thereof are called the 'special partners', who each contribute a specific amount of capital in cash or other property at cash value to the common stock; and such special partners are not liable for the debts of the partnership beyond the amount of the fund so contributed by them respectively to the capital. The persons desirous of forming such a partnership must make and severally sign a memorandum of co-partnership in a form which is given in the Schedule to the Act and acknowledge the same before a notary public. This memorandum must contain: 1. The name and business address of the firm; 2. The general nature of the business; 3. The names and addresses of all the general and special partners, distinguishing which are general and which special partners; 4. The amount of capital stock contributed by each special partner to common stock; 5. The duration of the partnership, viz., dates of its commencement and termination.

The memorandum must be recorded in the office of the Registrar of Records for the Colony.

**Companies.** The Companies Act, 1866, (Act of Assembly 29 Vic. c. 5), enables any five or more persons by subscribing their names to a memorandum of association, and otherwise complying with the requisitions contained in the Act in respect of registration, to form an incorporated company with or without limited liability.

The liability of the members may by the memorandum of association be limited either to the amount (if any) unpaid on the shares held by them, or to the amount they undertake to contribute to the assets in the event of its being wound up.

The memorandum of association must contain: 1. The name of the proposed company with the addition of the word "Limited"; 2. The part of the Colony



in which the registered office is situated; 3. The objects of the company; 4. A declaration that the liability of members is limited; 5. The amount of capital divided into shares of certain fixed amount therein specified.

No subscriber may take less than one share and each subscriber must write opposite his name the number of shares he takes.

The memorandum of association of a company limited by guarantee follows the form prescribed in the Companies Act (Imperial) 1862.

The memorandum of association may be accompanied by articles of association prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient, expressed in separate paragraphs and signed by them. The memorandum of association and the articles of association, if any, must be delivered to the Registrar of Records for the Colony, who must enter the same in the book of record and issue his certificate that the company is incorporated, and in the case of a limited company, that the company is limited. Thereupon the company is a body corporate with like power and capacities as follow the incorporation of an English company under the Companies Act, 1862. The provisions of the Imperial Companies Act are followed in most respects as to distribution of capital, and liability of members on winding up, and for the protection of the creditors and the members, and as to service of writs, notices, or other documents.

The Companies Act, 1868 (Act of Assembly 31 Vic. c. 4), came into force on 1st July 1868. It amends the principal Act of 1866 by enabling a company formed under it after the commencement of the amending Act to provide by its memorandum of association that the liability of the directors or managers or the managing director shall be unlimited, and varies the principal Act accordingly in respect of the contributions of such directors or managers in the event of winding up. The Act enables the Governor to authorize by licence under his hand and seal any company formed for the purpose of promoting commerce, art, science, religion, charity or any other useful object to be registered under the principal Act with exemption from the requirement as to the use of the word "limited" as any part of its name. The provisions as to contracts in the Companies Act, 1867, (Imperial) s. 37 and the winding-up clauses of the Companies Act, 1862, (Imperial) are adopted. The Companies Act of 1891 (Act of Assembly 54 Victoria Cap. 3) enables companies incorporated in any place outside the Colony to hold lands in the Colony in their corporate name subject to the provisions as to registration and the record of the Act or Charter of incorporation in the office of the Registrar of Records of the Colony, and the enabling power of the Act has a retrospective operation in respect of of grants, leases, or conveyances of lands, made prior to the passing of the Act to companies formed and incorporated outside the Colony, provided that any such company within twelve months (afterwards by a subsequent Act of Assembly extended to seven years) observes and fulfils the provisions therein contained as to registration.

Any question arising on company law will be adjudicated upon by the Colonial Court in accordance with the decisions of the English Courts.

**Sale of Goods.** The common law of England prevails in the Colony as regards the contract of a bargain and sale of goods. This general law and all decided cases upon it are now subject to the interpretation of the Sale of Goods (Imperial) Act, 1893, which was adopted in the year 1904 by Act of Assembly 4 Edw. VII. c. 37.

**Common Carriers.** There does not appear to be any Colonial Act which varies the English common law relating to common carriers on land. No Act of Assembly similar to the Imperial Carriers Act 1830 (11 Geo. IV. & 1 Will. IV. c. 68) is on the Colonial Statute book.

**Factors.** The Mercantile Agents Act 1904 (Act of Assembly 4 Edw. VII, c. 7) follows verbatim the Factors Act (Imperial) 1889. The law established by this Act and the English cases deciding questions of interpretation arising out of it must be taken as the law of the Colony on factors and mercantile agents. The law as to criminal frauds by agents has already been referred to.

**Bills of Exchange.** The Act of Assembly to declare British Sterling Money to be the money of account throughout the Colony (1838, 2 Vict. c. 4) applies to (inter alia) bills, notes, drafts, acceptances, etc.

The Act of Assembly to regulate interest on moneys and recovery of damages on protested Bills of Exchange (1859, 22 Vict. c. 17) fixes six per cent. per annum as the legal rate of interest, unless otherwise stipulated for and specified. Bills of exchange drawn or negotiated within the Colony upon any part of Europe and returned under protest for want of acceptance or non-payment or other cause are subject to re-exchange as damages for the same at the rate of twenty pounds per centum, and in case of non-payment of such protested bills and damages within three days after demand by the possessor on the drawer or endorser, then the bill with the damages thereon bears the legal interest at the rate of six per centum per annum.

In the case of bills on places other than Europe the above provisions apply except that the re-exchange as damages is fifteen pounds per centum and not twenty pounds.

The Imperial Bills of Exchange Act, 1832, was declared to be in force in the Colony by a local Act of 1892, and the changes made therein by the Imperial Bills of Exchange (Crossed Cheques) Act, 1906, were adopted in 1908.

**Bankruptcy.** The Bankruptcy Act, 1870 (Act of Assembly 33 Vic. c. 13), which came into force on 1st January, 1871, still remains the only bankruptcy statute in the Colony. It enables a single creditor, or two or more creditors, in respect of a debt of not less than fifty pounds to present a petition to the Court for adjudication in bankruptcy. Part I of the Act relates to the adjudication and vesting of the debtor's property, which, on the order of adjudication being made, vests in the Registrar and then in the trustee in bankruptcy on his appointment by the creditors. The property of the bankrupt becomes divisible amongst his creditors in proportion to the debts proved by them in the bankruptcy. Part II of the Act deals with the administration of the property by the trustee in bankruptcy, the payment of dividends and the discharge of the bankrupt. Part III regulates the constitution and powers of the Court having jurisdiction in bankruptcy both in respect of the bankrupt and of all the property devolving on the trustee in bankruptcy.

No privileges as a member of either the Legislative Council or House of Assembly avails any person in bankruptcy. The Act also regulates liquidation by arrangement and composition with creditors.

By Act of Assembly 34 Vic. c. 5 (1871) the Court is enabled to arrest any debtor who appears to be likely to quit the Colony.

**Imperial Acts extended to the Colony.** By the Supreme Court Act, 1896, it is enacted that whenever by Act of Assembly it is declared that any Act of the Imperial Parliament shall extend to the Colony such Act shall be deemed to extend thereto so far as the jurisdiction of the Supreme Court and the local circumstances permit.

**Maritime Law.** The English maritime law relating to affreightment, bills of lading, marine insurance, average, liens, bottomry and respondentia is followed by the Supreme Court of the Colony. As regards the Admiralty jurisdiction the Imperial Statute — The Colonial Courts of Admiralty Act 1890 — (53 & 54 Vic. c. 27) regulates the procedure.

### Courts and procedure.

**Legal Procedure.** The Supreme Court of the Bahamas is constituted by the Supreme Court Act of 1896. Prior to this year there were several Courts in the Colony: the General Court; the Court for Divorce and Matrimonial Causes; and the Court of Bankruptcy; each distinct in itself and, except the Court of Bankruptcy, presided over by the same Judge. There were also a Court of Ordinary with jurisdiction in testamentary cases and cases of intestacy, presided over by the Governor of the Colony, and a Court of Common Pleas with a limited civil jurisdiction. By the Supreme Court Act of 1896 all these Courts were united and consolidated with the Colonial Court of Admiralty, and constituted a Supreme Court of Judicature for the Colony, which was declared to be a Superior Court of Record. This Act determines that the constitution of the Supreme Court shall consist of a Chief Justice. It settles the rules for admission of counsel and attorneys to practise. The jurisdiction and powers of the Court are set out, with rights of appeal to Privy Council. Its procedure, whereby law and equity are to be administered concurrently, is



defined and regulated: and its arrangements as to Sittings are set out. By subsequent Acts the Supreme Court Act has been amended, but not so as to affect the above general statement of its scope and jurisdiction.

## Bibliography.

### Collections of Statutes.

**Anderson**, Sir George Campbell: Statute law, comprising all acts of the general assembly in force. London and Nassau. 1850—1855.

**Same**: Statute law of the Bahamas. London. 1862—1868.

**Same**: Statute law. London. 1877.

**Malcolm**, Sir Ormond Drimmie: Statute law of the Bahamas. London. 1901.<sup>1)</sup>

**Bennett**, W. Hart: Index to the acts of the Bahamas. 1900—1909. Nassau. 1909.

### Reports of Cases.

Name of report.	No of volumes.	Period.	Method of citation.
Bahamas Law Reports.	1	1900—1906	1 Bah. L. R.

## Statutes.<sup>2)</sup>

### Application of Law.

**a) 40 Geo. 3, c. 2.** An Act to declare how much of the Laws of England are practicable within the Bahama Islands, and ought to be in force within the Same (1799).

**Common law of England, with certain exceptions, declared in force in the colony.**

**1.** The common law of England, in all cases where the same hath not been altered by any of the Acts or Statutes hereinafter enumerated; or by any Act or Acts of Assembly of these Islands (except so much thereof as hath relation to the ancient feudal tenures, to outlawries in civil suits, to the wager of law or of batall, appeals of felony, writs of attaint and ecclesiastical matters), is and of right ought to be in full force within these Islands, as the same now is in that part of Great Britain called England.

**Declares certain Acts of Parliament to be in force. 2.** The several Statutes and Acts of Parliament, hereinafter particularly enumerated and mentioned, are, and of right ought to be, in full force and virtue within and throughout this Colony, as the same would be if the Bahama Islands were therein expressly named, or as if the aforesaid Acts and Statutes had been made and enacted by the General Assembly of these Islands<sup>3)</sup>.

<sup>1)</sup> Official compilation within the meaning of the Imperial *Evidence (Colonial Statutes) Act*, 1907. — Acts, 1908, c. 32. — <sup>2)</sup> As in force 1st January, 1912. — <sup>3)</sup> By this clause, 207 Acts of Parliament were originally declared to be in force within the Colony; but as the clause has been from time to time in part repealed by other Acts of Assembly, the titles of the Statutes were set forth in the Acts as they usually appear in the printed copies of the Statutes, and have also been so set forth in the previous reprints, but it has been thought unnecessary to insert them in the present reprint.

- 9 Henry 3, ch. 8.
- 2 Henry 3, ch. 18.
- 20 Henry 3, ch. 1.
- 20 Henry 3, ch. 2.
- 20 Henry 3, ch. 9.
- 3 Edward 1, ch. 4.
- 3 Edward 1, ch. 9.
- 3 Edward 1, ch. 15, except so much as relates to replevying of prisoners.
- 3 Edward 1, ch. 25.
- 3 Edward 1, ch. 26.
- 3 Edward 1, ch. 28.
- 3 Edward 1, ch. 29.
- 6 Edward 1, ch. 1.
- 13 Edward 1, statute 1, ch. 1.
- 13 Edward 1, statute 1, ch. 4.
- 13 Edward 1, ch. 7.
- 13 Edward 1, ch. 15.
- 13 Edward 1, ch. 22.
- 13 Edward 1, ch. 23.
- 13 Edward 1, ch. 31.
- 13 Edward 1, ch. 34.
- 13 Edward 1, ch. 40.
- 13 Edward 1, ch. 45.
- 13 Edward 1, ch. 49.
- 28 Edward 1, ch. 11.
- Stat. de frangentibus Prisonam, 1 Edward 2, statute 2.
- 1 Edward 3, statute 2, ch. 16.
- 4 Edward 3, ch. 2.
- 4 Edward 3, ch. 7.
- 14 Edward 3, statute 2, ch. 2.
- 18 Edward 3, statute 1, ch. 9.
- 20 Edward 3, ch. 3.
- 25 Edward 3, statute 5, ch. 2.
- 25 Edward 3, statute 5, ch. 3.
- 25 Edward 3, statute 5, ch. 5.
- 25 Edward 3, statute 5, ch. 14.
- 28 Edward 3, ch. 3.
- 34 Edward 3, ch. 12.
- 1 Richard 2, ch. 12.
- 5 Richard 2, ch. 8.
- 8 Richard 2, ch. 4.
- 13 Richard 2, statute 1, ch. 5.
- 15 Richard 2, ch. 2.
- 15 Richard 2, ch. 3.
- 17 Richard 2, ch. 8.
- 1 Henry 4, ch. 10.
- 4 Henry 4, ch. 23.
- 5 Henry 4, ch. 10.
- 11 Henry 4, ch. 3.
- 13 Henry 4, ch. 7.
- 2 Henry 5, ch. 2.
- 9 Henry 5, statute 1, ch. 4.
- 4 Henry 6, ch. 3.
- 8 Henry 6, ch. 9.
- 8 Henry 6, ch. 12.<sup>2)</sup>
- 8 Henry 6, ch. 15.
- 11 Henry 6, ch. 6.
- 1 Richard 3, ch. 3.<sup>3)</sup>
- 3 Henry 7, ch. 3.<sup>3)</sup>
- 4 Henry 7, ch. 20.
- 27 Henry 8, ch. 10.
- 28 Henry 8, ch. 15.
- 31 Henry 8, ch. 1.
- 32 Henry 8, ch. 9.
- 32 Henry 8, ch. 28.
- 32 Henry 8, ch. 32.
- 32 Henry 8, ch. 37.
- 32 Henry 8, ch. 38.
- 1 Edward 6, ch. 7.
- 5 Elizabeth, ch. 9.
- 8 Elizabeth, ch. 2.
- 13 Elizabeth, ch. 5.
- 13 Elizabeth, ch. 6.
- 27 Elizabeth, ch. 4.
- 43 Elizabeth, ch. 5.
- 7 James 1, ch. 12.
- 21 James 1, ch. 4.
- 21 James 1, ch. 14.
- 21 James 1, ch. 15.
- 21 James 1, ch. 16.
- 21 James 1, ch. 24.
- 16 Charles 2, ch. 7.
- 19 Charles 2, ch. 6.
- 22 and 23 Charles<sup>2)</sup>, ch. 10.
- 29 Charles 2, ch. 3.<sup>4)</sup>
- 29 Charles 2, ch. 7.
- 30 Charles 2, ch. 7.
- 31 Charles 2, ch. 2.
- 3 Wm. and M., ch. 14.
- 4 and 5 Wm. and M., ch. 16.
- 7 William 3, ch. 3.
- 7 and 8 Wm., 3, ch. 34.
- 8 and 9 Wm. 3, ch. 11.
- 8 and 9 Wm. 3, ch. 31.
- 10 and 11 Wm. 3, ch. 16.
- 1 Anne, ch. 6, statute 2.
- 4 Anne, ch. 16.
- 6 Anne, ch. 18.
- 8 Anne, ch. 14.
- 9 Anne, ch. 14.
- 2 Geo. 2, ch. 21.
- 4 Geo. 2, ch. 10.
- 4 Geo. 2, ch. 28.
- 7 Geo. 2, ch. 20.
- 11 Geo. 2, ch. 19.
- 15 Geo. 2, ch. 30.
- 19 Geo. 2, ch. 21.
- 20 Geo. 2, ch. 19.
- 20 Geo. 2, ch. 30.

**Rule of construction of extended Statutes. 6.** Provided always, and it is hereby declared, that the several Acts and Statutes hereby declared to be in force shall be taken, construed, and executed liberally, and according to the substantial effect and meaning of the same: and provided also, that nothing herein contained shall extend or be construed to extend, to abridge, alter, or repeal, any Act or Acts of the General Assembly of these Islands, or any article, clause, matter, or thing therein contained.

<sup>2)</sup> So much of this Statute as relates to the offences of "stealing, taking away, withdrawing, or avoiding of any record, or other like thing therein mentioned," is repealed. See Act of Assembly 4 Vic. c. 30. — <sup>3)</sup> So much of these Statutes as relate to mainprize and bail are suspended. See Act of Assembly, 4 Wm. 4, c. 25. — <sup>4)</sup> Repealed in part by Act of Parliament 1 Vic. c. 26, extending to this Colony by Act of Assembly 4 Vic. c. 23.



**Penalties on persons offending against extended Statutes.** 7. That all persons offending against any of the Acts, or Statutes, which have thereby been declared to be in force within these Islands, shall suffer the same pains, penalties, and forfeitures as such persons would be liable to for such offence if committed in England; and that all fines, penalties, and forfeitures imposed by any of the aforesaid Acts or Statutes, shall and lawfully may be prosecuted, sued for, imposed, recovered, and levied in the General Court of these islands, or other Court of corresponding jurisdiction, *mutatis mutandis* as the case may be.

**Powers of Court of Chancery and courts and officers of justice defined.** 8. That His Majesty's Governor, or Commander-in-Chief for the time being, together with the Privy Council, constituting the Court of Chancery, have, and of right ought to have, power and authority to execute, within these Islands, so much as well of the aforesaid Statutes, as of the common law (except as herein excepted) as the Lord Chancellor, or Keeper of the Great Seal, may lawfully do in England<sup>1</sup>). That the Justices of the General Court have, and of right ought to have, power and authority to execute so much as well of the aforesaid Statutes, as of the common law (except as hereinbefore excepted), as the Justices of the Court of King's Bench and Common Pleas, and the Barons of the Exchequer, and Commissioners of Oyer and Terminer, gaol delivery, and assize, lawfully may do in England. That His Majesty's justices of the peace within these Islands, have and of right ought to have, power and authority to execute so much, as well of the aforesaid Statutes, as of the common law (except as hereinbefore excepted), as lawfully may be executed in England. That the Provost Marshal of these islands and his lawful deputies, have, and of right ought to have, power and authority to execute so much as well of the aforesaid Statutes as of the common law (except as hereinbefore excepted), as may lawfully be executed by the sheriff, or under-sheriffs of any county in England. And that all constables, bailiffs, ministers, and other officers within these Islands, have, and of right ought severally and respectively to have, power and authority to execute so much as well of the aforesaid Statutes as of the common law (except as hereinbefore excepted) as any constable, minister, or other officer of the like style, name, or description, may lawfully execute in England.

**Short title.** 9. *The Declaratory Act, 1799.*<sup>2</sup>)

#### Note.

Since the passing of the foregoing Act, the Acts of Parliament mentioned in the sub-joined table and relating to topics within the scope of this work have been declared in the Colony by various Acts of Assembly.

Act of Parliament.	Subject of Act of Parliament with the addition of any restrictive words which may be used in the Act declaring the same in force.	By what Act of Assembly declared in force.
18 & 19 Vic. c. 111	Bills of Lading . . . . .	23 Vic. c. 23.
19 & 20 Vic. c. 97	Trade and Commerce <sup>3</sup> ) . . . . .	23 Vic. c. 23.
45 & 46 Vic. c. 61	Bills of Exchange . . . . .	55 Vic. c. 5.

### Partnerships.

a) 24 Vic. c. 13. An Act to authorize the Formation of Partnerships with Limited Liability (11th May, 1861).<sup>4</sup>)

**Short title.** [Added by No. 39 of 1904]. *The Partnership Limited Liability Act, 1861.*

**Partnerships may be formed.** 1. Partnerships, with limited liability, for the transaction of any mercantile, mechanical, or manufacturing business within the

<sup>1</sup>) The powers here given to the Governor in Council are now exercised by the Supreme Court of the Colony. — <sup>2</sup>) Title added by 4 Edw. 7, c. 39. — <sup>3</sup>) § 1 repealed by No. 37 of 1904. § 4 repealed by No. 36 of 1904. — <sup>4</sup>) So much of this Act as refers to the Public Bank is repealed by 49 Vic. c. 8.

Colony, except banking or insurance, may be formed by two or more persons, upon the terms, with the rights and powers, hereinafter provided.

**General and special partners.** 2. In any such partnership one or more of the members thereof shall be called the general partners and shall be jointly and severally responsible, as partners now are by law; and the other members thereof shall be called the special partners, who shall each contribute a specific amount of capital, in cash, or other property, at cash value, to the common stock; and such special partners shall not be liable for the debts of the partnership beyond the amount of the fund so contributed by them respectively to the capital; except as hereinafter provided.

**Form of memorandum of co-partnership.** 3. The persons desirous of forming such partnerships shall make, and severally sign, a memorandum of copartnership, which shall be in the form in the Schedule marked A, or as near thereto as circumstances will permit; and shall acknowledge the same before a notary public, who shall verify the same under his hand and seal of office; which memorandum of "co-partnership" shall contain the following things, that is to say: 1. The name of the firm under which the partnership business is to be conducted, and where the same is to be carried on. 2. The general nature of the business to be transacted. 3. The names of all the general and special partners interested therein, distinguishing which are general partners, and which are special partners, and their respective places of residence. 4. The amount of capital stock, in cash, or other property, which each special partner shall have contributed to common stock. 5. The period at which the partnership is to commence, and the period when it will terminate.

**Declaration of general partners.** 4. After such memorandum of co-partnership shall have been so made, acknowledged, and certified as hereinbefore provided, the general partners named therein shall also make and sign a solemn declaration before such notary to the effect that such portions of the capital stock as have been contributed in cash by the special partners have been deposited in the Public Bank at Nassau in the name of the firm, and shall produce to such notary, to be annexed to such declaration, a certificate to that effect from the cashier of the said bank; and shall also declare that the amount in money, or other property, at cash value, specified in such memorandum has been actually and in good faith contributed for the purpose of being applied as set forth in the memorandum.

**Declaration to be recorded and filed.** 5. Every memorandum so acknowledged and verified, and every declaration so made and signed as aforesaid, shall, with the certificate as aforesaid of the cashier of the Public Bank, be recorded in the office of the Registrar of Records for the Colony; and the originals shall then be filed in the said office; and such originals, and the respective records thereof, shall be open to the inspection of all persons desiring to peruse the same, during the time such office is open for the discharge of public business; and every person requiring a copy thereof shall be entitled to have the same furnished him on payment of the usual fees.

**No partnership to be deemed formed until declaration and other papers filed.** 6. No such partnership shall be deemed to have been formed until such memorandum, with the verification thereto, and the declaration of the general partners, and certificate of the cashier of the Public Bank, shall have been filed as above directed; and, if any false statement be made in such memorandum or declaration, such partnership shall not be deemed a partnership with limited liability under this Act.

**Publication of terms of partnership.** 7. The partners shall publish the terms of the partnership, when recorded, for at least six weeks immediately after the recording thereof in all the newspapers printed in this Colony, and, until such publication is made, for the period aforesaid, the partnership shall not be deemed a partnership with limited liability under this Act.

**Evidence of publication.** 8. Affidavits of the publication of such notices, by the printers of the newspapers in which the same have been published, or some one in their employ, knowing of such publication, may be filed in the office of the Registrar of Records, and shall be evidence of the fact therein contained.

**Name of general partners only to be inserted in memorandum.** 9. In the memorandum of copartnership, to be made and filed as hereinbefore provided, the name or names of the general partner or partners only shall be inserted in the name of the firm under which the business of the partnership is to be carried on, with the word "limited" as the last word of such name, and the business of the partnership shall be carried on under no other name than that inserted in the memorandum of the



copartnership, and the general partners only shall be authorized to transact the business of the partnership, and to sign for and bind the same; and if any special partner's name be inserted, with his privity or consent, in the name of the firm under which the business of the said copartnership is carried on, or if any special partner, in any manner, transact business, or contract in the name of the partnership, he shall incur all the liability in respect thereof which he otherwise would have if this Act had not been passed.

**Recorded name of partnership to be used.** 10. In all business transactions, of any such partnership, the name of such partnership, as recorded in the "memorandum of copartnership," with the word "limited" as the last word of such name, shall be the name used; and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods, and all bills of parcels, invoices, receipts, and letters, by, or on behalf of such partnership, such name with the word "limited," as the last word of such name, shall be written, printed, or engraved, in legible characters, and if, in any such business transaction, or in any bill, note, endorsement, cheque, order, invoice, receipt or letter, any other name is used, or the word "limited," as the last word of such name, omitted, any person thereby induced to deal with such partnership, or, who deals with the same, in any such transaction, or into whose possession any such bill, note, endorsement, cheque, order, invoice, receipt, or letter, may be or come, in the ordinary course of mercantile dealings, shall have the same rights, and be entitled to the same remedies against all the partners, whether general or special, of the said partnership as he would have been entitled to, if the said partnership had not been formed, under the provisions of this Act.

**Name of partnership not to be identical with any other, or so nearly resembling as to deceive.** 11. No partnership under this Act shall have a name identical with that inserted in the "memorandum of copartnership," of a subsisting partnership, or, so nearly resembling the same, as to be calculated to deceive, and it shall be the duty of the Registrar of Records to refuse and abstain from filing or recording any memorandum of copartnership, in which the name of the proposed partnership is identical with that of a subsisting partnership, under this Act, or which, in his opinion, so nearly resembles the same, as to be calculated to deceive.

**Memorandum, declaration and certificate in renewal or continuance of partnership.** 12. Upon the renewal or continuance of any partnership, under this Act, beyond the time originally fixed for its duration, a memorandum of copartnership shall be made, acknowledged, and verified, with a declaration made, and the certificate of the cashier of the Public Bank obtained, and the said memorandum, declaration, and certificate shall be filed in the office of the Registrar of Records, in the same and the like manner as is hereinbefore provided for the formation of such partnership; and public notice of such continuance, or renewal, shall also be given in the same and the like manner, and for the same period, and subject to the same provisions, as is hereinbefore provided, upon the formation of such partnership.

**No alteration to be made in number of partners during period mentioned in memorandum.** 13. During the period mentioned in the memorandum of copartnership, for the existence of the partnership, no alteration shall be made, in the number of the partners, whether general or special, or, in the name of the firm under which the partnership business is carried on, or the nature of the business carried on, or the capital in cash, or stock, or in any other matter specified, in the original memorandum of copartnership; and any partnership which shall in any way be carried on, after any alteration in any of the above particulars, shall have taken place, shall not be deemed a partnership, with limited liability, within the meaning of this Act.

**No capital stock to be withdrawn during continuance of partnership.** 17. During the continuance of the partnership, under the provisions of this Act, no part of the capital stock thereof shall be withdrawn, nor any division of interest or profits be made, so as to reduce said capital stock below the sum stated in the memorandum above mentioned; and if, at any time, during the continuance, or, at the termination of the partnership, the property or assets shall not be sufficient to pay the partnership debts, then the special partners shall, severally, be held responsible for all sums by them received, withdrawn, or divided, with interest thereon, from the time when such partnership is declared by the official assignee, or other person authorized by the provisions, of the thirty-fifth clause of this Act, to have become insolvent, such sums with interest thereon, to be over and above the amount which such special partners may have contributed upon the formation of such partnership.

**Suits, except in certain cases, to be prosecuted by and against general partners.**

15. All suits, respecting the business of such partnership, shall be prosecuted by, and against, the general partnership only; except in those cases in which provision is made in this Act, that the partnership shall not be deemed a partnership; and excepting, also, those cases where special partners shall be held, generally, responsible, on account of any sums, by them received, or withdrawn, from the common stock, as above provided.

**No dissolution, except by operation of law, to take place before the time specified, unless with notice given.** 16. No dissolution of a partnership, with limited liability, under this Act, shall take place, except by operation of law, before the time specified in the memorandum before mentioned; unless a notice of such dissolution shall be recorded in the office of the Colonial Secretary: and unless such notice shall also be published, twelve weeks, successively, in all the newspapers published in this Colony.

**Provision for winding-up partnership.** 17. And whereas it is expedient that provision should be made for winding up a partnership, with limited liability, be it enacted as follows: A partnership may be wound up, by the Court of Bankruptcy, under the following circumstances, that is to say: 1. Whenever the partners pass a special resolution requiring the partnership to be wound up by the Court. 2. Upon the death of any of the partners. 3. Whenever the partnership is unable to pay its debts. 4. Whenever three-fourths of the capital of the partnership has been lost, or become unavailable. 5. Whenever the special partners, or a majority of them, so require it.

**When partnership shall be deemed unable to pay its debts.** 18. A partnership shall be deemed to be unable to pay its debts: 1. Whenever a creditor to whom the partnership is indebted, in a sum exceeding fifty pounds, then due, has served, on such partnership, by leaving the same, at the place of business thereof, a demand, in writing requiring the partnership to pay the sum so due, and the partnership have, for the space of one calendar month neglected to pay such sum, or secure or compound for the same to the satisfaction of the creditor. 2. Whenever execution, issued on a judgment, decree, or order obtained in any court, in favour of any creditor, in any suit, or other legal proceeding, instituted by such creditor against the partnership is returned unsatisfied in whole, or in part.

**Application for winding-up shall be by petition.** 19. Any application for the winding-up of a partnership for shall be by petition, and there shall be filed, or lodged at the time when such petition is presented, an affidavit verifying the same, and such petition may, in cases where the partnership is unable to pay its debts, be presented either by a creditor or general partner, but when any other ground is alleged for winding up the partnership, a partner alone is entitled to present the petition.

**Court may dismiss petition with or without costs.** 20. Upon the hearing of any petition presented by a creditor, the Court may dismiss such petition with or without costs, to be paid by the petitioner, or it may make an order, or pronounce an interlocutor, directing such partnerships, by a day to be named in the order, or interlocutor, to pay, or secure payment to the creditor, of all moneys that may be found due to him, together with such costs as the Court may direct, or the Court may, if it so thinks fit, on the hearing of such petition, make an order, or decree, for the winding-up the partnership in the first instance, or such other order as it deems just.

**Court may make order for winding up partnership if payment not made or security given.** 21. If at the expiration of the time named in such order, or interlocutor, such payment is not paid or security given, the Court may thereupon make an order, or decree, for winding up the partnership.

**Power of Court on hearing petition.** 22. Upon the hearing of a petition presented by a partner, the Court may dismiss such petition with or without costs, to be paid by the petitioner, or it may make an order, or decree, for winding up the partnership or such other order, or decree, as it deems just.

**After date of order or decree suits to be stayed, etc.** 23. After the date of such order, or decree, for winding up the partnership, all suits against the partnership shall, if the Court so orders, be stayed; no general partner, or other person connected with the partnership, shall, without the sanction of the Court, dispose of any of the property, effects, or things in action of the partnership.

**After order assets to be collected.** 24. As soon as may be after making an order, or decree, for winding up the partnership, the Court shall cause the assets of the partnership to be collected, and applied in discharge of its liabilities, in a due course of administration.



**Conveyance, mortgage, etc., by undue or fraudulent preference.** 25. Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property, as would, if made or done, by, or against any individual trader, be deemed, in the event of his bankruptcy, to have been made, or done, by way of undue or fraudulent preference, of any creditor of such trader, shall, if made, or done, by, or against any partnership formed under this Act, be deemed, in the event of an order being made for winding up such partnership, to have been or done by way of undue or fraudulent preference, of such creditor of such partnership, and shall be invalid accordingly; and for the purposes of this section, the presentation of a petition for winding up a partnership shall be deemed to correspond with the filing of a petition for adjudication of bankruptcy, in the case of an individual trader, and any conveyance or assignment, made by any partnership formed under this Act, of all its estate and effects, to trustees, for the benefit of all its creditors, shall be void to all intents and purposes.

**Proceedings of Court on winding up.** 26. The Court may, after it has made an order, or decree, for winding up the partnership, summon before it, any person known or suspected to have in his possession, any of the estate or effects of the partnership, or supposed to be indebted to the partnership, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the partnership, and the Court may require any such person to produce any books, papers, deeds, writings, or other documents, in his custody, or power, which may appear to the Court requisite to the full disclosure of any of the matters which the Court thinks necessary to be inquired into, for the purpose of winding up the partnership; and if any person so summoned refuses to come before the Court, at the time appointed, having no lawful impediment, (made known to the Court at the time of its sitting, and allowed by it,) the Court may, by warrant, authorise and direct the persons therein named for that purpose to apprehend such person, and bring him before the Court for examination.

**Court may examine witnesses.** 27. The Court may examine, upon oath, either by word of mouth, or upon written interrogatories any person appearing or brought before them in manner aforesaid, concerning the trade, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to sign and subscribe the same.

**Penalty on partner mutilating or altering books or papers.** 28. If any partner of any partnership, for the winding up of which an order, or decree, has been made under this Act, destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes, or is privy to the making of the false or fraudulent entry in any register, book of account, or other document belonging to the partnership, with intent to defraud the creditors or partners of such partnership, or any of them, every person so offending shall be deemed to be guilty of a misdemeanour, and upon being convicted, shall be liable to imprisonment for any term not exceeding five years, with or without hard labour.

**Books of partnership to be prima facie evidence.** 29. All books, accounts, and documents of the partnership, and of the liquidators hereinafter mentioned, shall, as between the partners of the partnership, be prima facie evidence of the truth of all matters therein contained, and purporting to be therein recorded.

**Moneys received by Court to be paid into bank.** 30. All moneys received under the direction of the Court on account of the sale, or conversion of any of the assets of the partnership, or of any other matters, shall be paid into the bank at Nassau, to the credit of such account as the Court may direct, and no money standing to such account shall be paid out of the bank, except upon cheques signed in such manner as the Court directs.

**Court may appoint receiver of estate.** 31. The Court may at any time after the presentation of a petition for winding up a partnership, and either before or after making an order for winding up the same, upon motion of any creditor, or partner, appoint a receiver of the estate and effects of the partnership, and also, by notice or advertisement, require all creditors to present and prove their claims within a certain time, or be precluded from the benefits of any distribution which may be made before such claim is proved.

**Power of Court to stay proceedings.** 32. The Court may at any time after an order or decree has been made for winding up a partnership, upon the application by motion of any creditor or partner, and upon proof to the satisfaction of the Court

that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether, or for a limited time, upon such terms and subject to such conditions as it deems fit.

**When creditors satisfied, Court to distribute surplus. 33.** As soon as the creditors are satisfied, the Court shall proceed to adjust the rights of the partners among themselves, and to distribute the surplus that may remain amongst the parties entitled thereto.

**Order as to priority of payment. 34.** The Court may make such order as to the priority of payment out of the estate of the partnership, of the costs, charges, and expenses incurred in winding up any partnership, as it thinks just.

**Official assignee to be official liquidator. 35.** For the purpose of conducting the proceedings in winding up a partnership, and assisting the Court therein, the official assignee of the Court of Bankruptcy, shall be appointed by the Court, and called "official liquidator" under the provisions of this Act, but it shall be lawful in cases where the winding-up takes place at the suit of the creditor, for the major part in value of the creditors assembled at a meeting to be held for the purpose, and in cases where the winding-up takes place at the suit of a partner, for the major part in value of the partners assembled at a meeting to be held for the purpose, to appoint another official liquidator to act concurrently with the official liquidator so named by the Court.

**Official liquidator to be described as such, and not by name. 36.** The official liquidator, or liquidators, shall be described by the style of the official liquidator, or liquidators, of the particular partnership in respect of which they or he are or is appointed, and not by their or his individual names or name, they or he shall take into their or his custody all the property, effects, and things in actions of the partnership, and shall perform such duties in reference to the winding-up of the partnership as may be imposed by the Court.

**Powers of official liquidators. 37.** The official liquidators shall have power, with the sanction of the Court to do the following things: To bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, in the name, and on behalf of the partnership. To carry on the business of the partnership so far as may be necessary for the beneficial winding-up of the same. To sell the real, and personal, and heritable, and moveable property, effects, and things in action of the partnership by public auction, or private contract, with power, if they think fit, to transfer the whole thereof to any person or persons, or to sell the same in parcels. To execute in the name, and on behalf of the partnership, all deeds, receipts, and other documents they may think necessary. To refer disputes to arbitration, and compromise any debts or claims. To draw, accept, make, and endorse any bill of exchange, or promissory note, and also to raise upon the security of the assets of the company from time to time any requisite sum, or sums of money, and the drawing, accepting, making, or endorsing of every such bill of exchange or promissory note as aforesaid, on behalf of the partnership, shall have the same effect, with respect to the liability of such partnership, as if such bill or note had been drawn, accepted, made, or endorsed by such partnership, in the course of carrying on the business thereof. To do and execute all such other things as may be necessary for winding up the affairs of the partnership, and distributing its assets.

**May appoint a law agent. 38.** The official liquidators may, with the approval of the Court, appoint a solicitor or law agent, and such clerks, or officers, as may be necessary to assist them in the performance of their duties. There shall be paid to such solicitor, or law agent, and such clerks and officers, such remuneration, by way of fees, or otherwise, as may be allowed by the Court.

**Payment of official liquidators. 39.** There shall be paid to the official liquidators such salary, or remuneration, by way of percentage, or otherwise, as the Court directs.

**When the affairs of partnership wound up, Court to dissolve the same. 40.** When the affairs of the partnership have been completely wound up, the Court shall make an order, or decree, declaring the partnership to be dissolved from the date of such order, or decree, and the partnership shall be dissolved accordingly.

**Order so made to be reported to Registrar of Records. 41.** Any order or decree so made, shall be reported by the official liquidator to the Registrar of Records, who shall make a minute of the dissolution of such partnership, on the memorandum of co partnership, and the record thereof in his office.



[This Act is identical in all material respects with the Imperial *Partnership Act, 1890*, (53 & 54 Vic. c. 39).]

## Companies.<sup>1)</sup>

### a) 29 Vic. c. 5. An Act for the Incorporation and Regulation of Trading Companies and other Associations (27th March, 1866).

#### *Part. I. Constitution and Incorporation of Companies and Associations under this Act.*

**Mode of forming company. 1.** That any five or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company, with or without limited liability.

Imp. § 2.

**Mode of limiting liability of members. 2.** The liability of the members of a company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake, by the memorandum of association, to contribute to the assets of the company in the event of its being wound up.

Imp. § 2.

**Memorandum of association of a company limited by shares. 3.** Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things (that is to say): 1. The name of the proposed company, with the addition of the word "limited," as the last word in such name. 2. The part of the Colony in which the registered office of the company is proposed to be situate. 3. The objects for which the proposed company is to be established. 4. A declaration that the liability of the members is limited. 5. The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount, to be also therein specified. Subject to the following regulations: 1. That no subscriber shall take less than one share. 2. That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Imp. § 3.

**Memorandum of association of a limited company. 4.** Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company, in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following thing (that is to say): 1. The name of the proposed company, with the addition of the word "limited," as the last word in such name. 2. The part of the Colony in which the registered office of the company is proposed to be situate. 3. The objects for which the proposed company is to be established. 4. A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amounts as may be required, not exceeding a specified amount.

Imp. § 4.

**Memorandum of association of an unlimited company. 5.** Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association shall contain the following things (that is to say): 1. The name of the proposed company. 2. The part of the Colony in which the registered office of the company is proposed to be situate. 3. The objects for which the proposed company is to be established.

Imp. § 5.

<sup>1)</sup> The references (Imp.) in the notes are to the *Imperial Companies (Consolidation) Act, 1903*, (8 Edw. 7, c. 69).



**Signature and effect of memorandum of association. 6.** The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

Imp. § 14.

**Power of certain companies to alter memorandum of association. 7.** Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock; but, save as aforesaid, and save as is herein provided in the case of a change of name, no alteration shall be made by any company in the conditions contained in its memorandum of association.

Imp. § 7.

**Power of companies to change names. 8.** Any company under this Act, with the sanction of a special resolution of the company passed in manner hereinafter mentioned, may change its name, and upon such change being made, the Registrar of Records, on receiving the special resolution authorizing the same, shall, after recording the special resolution, issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted, or to be instituted, by or against the company; and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Imp. § 8.

#### *Articles of association.*

**Regulations to be prescribed by articles of association. 9.** The memorandum of association may be accompanied, when registered, by articles of association, signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. The articles shall be expressed in separate paragraphs numbered arithmetically. They shall, in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered. In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Imp. §§ 5, 10, 12.

**Signature and effect of articles of association. 10.** The articles of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least; when registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself his heirs, executors, and administrators to conform to all the regulations contained in such articles, subject to the provisions of this Act; and all moneys payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member of<sup>1)</sup> the company.

Imp. § 14.

#### *General provisions.*

**Registration. 11.** The memorandum of association and the articles of association, if any, shall be delivered to the Registrar of Records for the Colony, who shall enter the same in a book of record, to be opened and kept in his office for the purpose; and after such entry shall have been made, the memorandum and articles shall be

<sup>1)</sup> *Sic*; obviously "to".

retained by the said Registrar as a record of his office, and the like fees shall be payable in respect of the entering and recording of such documents as are now by law payable on entering and recording of deeds.

Imp. § 15.

**Certificate of registration. Incorporation of company. 12.** Upon the registration of the memorandum of association, and of the articles of association, or of the memorandum alone, as the case may be, the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited. The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned. A certificate of the incorporation of any company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

**Governor in council may grant licences to lay down rails in public streets and build out wharves in certain cases. 13.** If any company or association incorporated under this Act shall require to lay down rails, pipes, or other material in any public road, street, or other public place, for the purpose of enabling them to carry on the business or objects for which the members have associated themselves together; or to build out wharves or abutments in any port, harbour, or public water for any such like purpose, it shall be lawful for the Governor, acting by and with the advice of the members of the executive council, on application by the parties, in his discretion, to grant a licence or licences for the purpose or purposes required; and upon such terms and conditions for the protection of the interests of the public as may be deemed necessary.

**Lands to be used only for purposes of company not to confer political franchise. 14.** The right to hold lands under this Act shall be restricted exclusively to purposes for which the particular company or association has been formed; and no member of any such company or association or any of their servants or tenants shall exercise any political franchise in respect of any lands held by any such company or association.

**Copies of memorandum and articles to be given to members. 15.** A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of such reasonable sum, not exceeding two shillings for each copy, as may be fixed by any rule of the company; and in the absence of any such rule, shall be given gratuitously; and if any company makes default in forwarding a copy of the memorandum of association, and articles of association, if any, to a member, in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding one pound.

Imp. § 18.

**Provision against identity of names in companies. 16.** No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved, and testifies its consent in such manner as the Registrar of Records requires; and if any company, through inadvertence or otherwise, is without such consent, as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company may, with the sanction of the Registrar, change its name, and upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation, altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted, or to be instituted, by or against the company; and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Imp. § 8.



*Part II. Distribution of Capital and Liability of Members of Companies and Associations under this Act.*

*Distribution of capital.*

**Share or interest in company to be personalty.** 17. The shares or other interest of a member in a company under this Act shall be personal estate, capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real estate; and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

Imp. § 22.

**Definition of member.** 18. The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned, and every other person who has agreed to become a member of a company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company.

Imp. § 24.

**Transfer by personal representative.** 19. Any transfer of the share or other interest of a deceased member of a company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Imp. § 29.

**Register of members.** 20. Every company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars: 1. The names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number; and of the amount paid, or agreed to be considered as paid, on the shares of each member. 2. The date at which the name of any person was entered on the register as a member. 3. The date at which any person ceased to be a member. And any company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues; and every director or manager of the company who shall knowingly and wilfully authorize, or permit such contravention, shall incur the like penalty.

Imp. § 25.

**Annual list of members and return of capital, shares, calls, etc.** 21. Every company under this Act, and having a capital divided into shares, shall make, once at least in every year, a list of all persons, who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the company; and such lists shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars: 1. The amount of the capital of the company, and the number of shares into which it is divided. 2. The number of shares taken from the commencement of the company up to the date of the summary. 3. The amount of calls made on each share. 4. The total amount of calls received. 5. The total amount of calls unpaid. 6. The total amount of shares forfeited. 7. The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them. The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day, as is mentioned in this section, and a copy shall forthwith be forwarded to the Registrar of Records of the Colony, to be kept by him in his office with the original memorandum of association.

Imp. § 26.

**Penalty on company not making return.** 22. If any company under this Act, and having a capital divided into shares, make default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar of Records, such company shall incur

a penalty not exceeding five pounds for every day during which such default continues; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 4.

**Certificate of shares or stock. 23.** A certificate, under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be prima facie evidence of the title of the member to the share or shares or stock therein specified.

Imp. § 23.

**Inspection of register. 24.** The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned. Except when closed as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe for each inspection; and every such member or other person may receive a copy of such register or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of sixpence for every hundred words required to be copied. If such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds and a further penalty not exceeding two pounds for every day during which such refusal continues; and every director and manager of the company who shall knowingly authorize or permit such refusal shall incur the like penalty; and in addition to the above penalty, any Judge sitting in chambers may by order compel an immediate inspection of the register.

**Notice of increase of capital and of members to be given to Registrar of Records. 25.<sup>1</sup>** Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number shall be given to the Registrar of Records, in the case of an increase of capital within thirty days from the date of the passing of the resolution by which such increase has been authorized; and in the case of an increase of members, within thirty days from the time at which such increase of members has been resolved on or has taken place; and the Registrar of Records shall forthwith record the amount of such increase of capital or members. If such notice is not given within the period aforesaid, the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur a like penalty.

**Remedy for improper entry or omission of entry in register. 26.** If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this Act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved or any member of the company or the company itself, may by motion in the General Court apply for an order that the register may be rectified; and the Court may either refuse such application with or without costs, to be paid by the applicant, or it may if satisfied of the justice of the case make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application, or petition, and any damages the party aggrieved may have sustained. The Court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the Court may in such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register: Provided that the Court may direct an issue to be tried, in which any question of law may be raised.

**Notice to Registrar of rectification of register. 27.** Whenever any order has been made rectifying the register, in the case of a company hereby required to send a



list of its members to the Registrar of Records, the Court shall by its order direct that due notice of such rectification be given the Registrar.

Imp. § 30.

**Register to be evidence.** 28. The register of members shall be prima facie evidence of any matters by this Act directed or authorized to be inserted therein.

Imp. § 33.

*Liability of members.*

**Liability of present and past members of company.** 29. In the event of a company formed under this Act being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, that is to say: 1. No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards, prior to the commencement of the winding-up. 2. No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member. 3. No past member shall be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act. 4. In case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member. 5. In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association. 6. Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract. 7. No sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories amongst themselves.

Imp. § 123.

*Part III. Management and Administration of Companies and Associations under this Act.*

*Provision for protection of creditors.*

**Registered office of company.** 30. Every company under this Act shall have a registered office, to which all communications and notices may be addressed. If any company under this Act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Imp. § 62.

**Notice of situation of registered office.** 31. Notice of the situation of such registered office, and of any change therein, shall be given to the Registrar of Records and recorded by him, and shall be published in three successive numbers of the official newspaper. Until such notice is given and published, the company shall not be deemed to have complied with the provisions of this Act, with respect to having a registered office.

Imp. § 62.

**Publication of name by a limited company.** 32. Every limited company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting

to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

Imp. § 63.

**Penalties on non-publication of name. 33.** If any limited company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default, shall be liable to the like penalty; and if any director, manager, or officer of such company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company, whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such company, or signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bills of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Imp. § 63.

**Register of mortgages. 34.** Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge. If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry, shall incur a penalty not exceeding fifty pounds. The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty, any Judge sitting in chambers, may, by order, compel an immediate inspection of the register.

Imp. §§ 100, 101.

**List of directors to be sent to Registrar. 35.** Every company under this Act shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of Records a copy of such register, and shall from time to time notify to the Registrar of Records any change that takes place in such directors or managers.

Imp. § 75.

**Penalty on company not keeping register of directors. 36.** If any company under this Act makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar of Records, in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding five pounds for every day during which such default continues; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Imp. § 75.

**Promissory notes and bills of exchange. 37.** A promissory note or bill of exchange shall be deemed to have been made, accepted, or endorsed on behalf of any company under this Act, if made, accepted, or endorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or endorsed by, or on behalf, or on account of the company, by any person acting under the authority of the company.

Imp. § 77.

**Penalty for carrying on business with less than a certain number of members. 38.** If any company under this Act carries on business when the number of its mem-



bers is less than the number mentioned in the first section of this Act for a period of six months after the number has been so reduced, every person who is a member of such company, during the time that it so carries on business after such period of six months, and is cognisant of the fact that it is so carrying on business with fewer than the legal number of members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same without the joinder in the action or suit of any other member.

Imp. § 115.

*Provisions for protection of members.*

**General meeting of company. 39.** A general meeting of every company under this Act shall be held once at the least in every year.

Imp. § 64.

**Power to alter regulations by special resolution. 40.** Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any company formed under this Act may, in general meeting from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent resolution.

Imp. § 13.

**Definition of special resolution. 41.** A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy (in cases where by the regulations of the company proxies are allowed) at any general meeting, of which notice specifying the intention to propose such resolution has been duly given and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote as may be present, in person, or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed. At any meeting mentioned in this section, unless a poll is demanded by at least three members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. Notice of any meeting shall, for the purposes of this section, be deemed to be duly given, and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company. In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

Imp. § 69.

**Provision where no regulations as to meetings. 42.** In default of any regulations as to voting, every member shall have one vote, and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned, of which seven days' notice has been served on every member present in the place where the meeting is to be held; and in default of any regulations as to the persons to summon meetings, three members shall be competent to summon the same; and in default of any regulations as to who is to be chairman of such meeting it shall be competent for any person elected by the members present to preside.

Imp. § 67.

**Registry of special resolutions. 43.** A copy of any special resolution that is passed by any company under this Act shall be printed, and forwarded to the Registrar of Records, and shall be recorded by him.

Imp. § 70.

**Copies of special resolution. 44.** Where articles of association have been registered, a copy of every special resolution for the time being in force, shall be annexed to, or embodied in, every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered,

a copy of any special resolution shall be forwarded in print to any member requesting the same, on payment of one shilling, or such less sum as the company may direct; and if the company makes default in complying with the provisions of this section, it shall incur a penalty, not exceeding one pound, for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Imp. § 70.

**Execution of deeds abroad. 45.** Any company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the Colony, and every deed signed by such attorney on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

Imp. § 78.

#### *Notices.*

**Service of notices on company. 46.** Any writ, notice, order, or other document required to be served upon the company, may be served by leaving the same, or sending it through the post in a prepaid letter, addressed to the company at their registered office.

Imp. § 116.

**Rules as to notices by letter. 47.** Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post office.

**Authentication of summons, notice, or proceeding by company. 48.** Any summons, notice, order, or proceeding requiring authentication by the company, may be signed by any director, secretary, or other authorized officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Imp. § 85.

#### *Legal proceedings.*

**Mode of recovering penalties. 49.** All penalties under this Act shall be recovered in a summary way before any salaried justice of the peace, or before any two other justices in manner provided for by the Act of the General Assembly of the Bahama Islands of the twelfth year of Her Majesty's reign, c. 10, or any Act amending the same; and all such penalties shall be applied in aid of the general revenue of the Colony.

Imp. § 76.

**Evidence of proceedings of meetings, etc. 50.** Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company, in cases where there are directors or managers, to be duly entered in books, to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the company, or meeting of the directors or managers in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened, and all resolutions passed thereat, or proceedings had, to have been duly passed and had, and all appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

Imp. § 71.

**Security for costs in actions brought by limited companies. 51.** Where a limited company is plaintiff in any action, suit, or other legal proceedings, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Imp. § 278.



**Declaration in action against members.** 52. In any action or suit brought by the company against any member to receive any call or other moneys due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other moneys due whereby an action or suit hath accrued to the company.

**Power for companies to refer matters to arbitration.** 53. Any company under this Act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration any existing or future difference, question, or other matter whatsoever in dispute between itself and any other company or person; and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made, power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves or by the directors or other managing body of such companies.

**Short title of Act.** 54. This Act may be cited for all purposes as *The Companies' Act, 1866*.

## b) 31 Vic. c. 4. An Act to amend the Companies' Act, 1866 (1st April, 1868).

### *Preliminary.*

**Name of Act.** 1. This Act may be cited for all purposes as *The Companies' Act, 1868*.

**Companies' Act of 1866 and 1868 to be construed as one.** 2. *The Companies' Act, 1866*, is hereinafter referred to as "the Principal Act," and the Principal Act and this Act are hereinafter distinguished as, and may be cited for all purposes as *The Companies' Act 1866 and 1868*, and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the Principal Act, and the expression "this Act" in the Principal Act, and any expression referring to the Principal Act which occurs in any Act or other document, shall be construed to mean the Principal Act as amended by this Act.

**When this Act shall come into force.** 3. This Act shall come into force on the first day of July, one thousand eight hundred and sixty-eight, which date is hereinafter referred to as the commencement of this Act.

### *Unlimited liability of directors.*

**When a director's liability may be unlimited.** 4. When after the commencement of this Act a company is formed as a limited company under the Principal Act, the liability of the directors or managers of such company, or the managing director may, if so provided by the memorandum of association be unlimited.

**Modifications of 29th section of Principal Act.** 5. The following modifications shall be made in the twenty-ninth section of the Principal Act, with respect to the contributions to be required in the event of the winding-up of a limited company under the Principal Act, from any director or manager whose liability is in pursuance of this Act unlimited: 1. Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited company. 2. No contribution required from any past director or manager, who has ceased to hold such office for a period of one year or upwards, prior to the commencement of such winding-up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company. 3. No contribution required from any past director or manager, in respect of any debt or liability of the company, contracted after the time at which he ceased to hold such office, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company. 4. Subject to the provisions contained in the regulations of the company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up.

*Associations not of profit.*

[6. Relates to associations not for profit.]

*Contracts.*

**How contracts may be made.** 7. Contracts on behalf of any company under the Principal Act may be made as follows: 1. Any contract which if made between private persons, would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing, under the common seal of the company, and such contract may be in the same manner varied or discharged. 2. Any contract which if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company, and such contracts may in the same manner be varied or discharged. 3. Any contract which if made between private persons, would by law be valid, although made by parol only, and not reduced into writing, may be made by parol on behalf of the company, by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged. 4. And all contracts made according to the provisions herein contained, shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be.

Imp. § 76.

*Winding-up.*

**Statute of Imperial Parliament extended to this Colony.** 8. That all and singular the provisions contained in the 4th part of the Statute of the Imperial Parliament, passed in the 25th and 26th years of Her present Majesty's reign, entitled an Act for the incorporation, regulation, and winding-up of trading companies and other associations, shall extend to, and be in force in this Colony, for the purpose of the winding-up companies under the Principal Act, and this Act, as far as such provisions are applicable to this Colony, with the following alterations, that is to say: that the expression "the Court" as used therein, shall mean the equity side of the General Court; the words "the Registrar of Joint Stock Companies" shall mean the Registrar of Records.

**c) 54 Vic. c. 3. An Act to enable Companies formed and incorporated without the Colony to hold Lands therein, and for other Purposes (5th June 1891).**

**Short title.** [Added by No. 39 of 1904]. *The Foreign Companies Land Act, 1891.*

**Companies formed and incorporated without the Colony may hold lands therein.**

**Proviso.** 1. It shall be lawful for any company formed and incorporated at any place without the Bahama Islands for the purpose of acquiring lands within the said Islands to hold lands in the said Islands in their corporate name and the same to deal with, transfer, mortgage, and dispose of as to it may seem meet. Provided, however, that the privileges granted to any company as aforesaid shall only exist in the case of a company which observes the following conditions, that is to say: a) Has deposited, or caused to be deposited, for record in the office of Registrar of Records of these Islands a copy of the act of charter or incorporation of such company duly certified and authenticated under the public seal of the country, city, or place under the laws of which the said company has been incorporated and has paid the recording fees thereon; b) Has caused a public notice to be inserted in the official newspaper of the Colony to the effect that such certified copy has been deposited as required by this Act, and also setting forth the Island or place within these Islands in which the company has established an office for the transaction of its business.

**Copy of act or charter of incorporation may be recorded by Registrar of Records.**

2. It shall be lawful for the Registrar of Records to record every copy of act or charter of incorporation required by this Act to be deposited in his office in the same manner as other documents are now recorded by law upon the same being lodged for such purpose.



**Extends provisions of the Companies Act, 1866, and the Companies Act, 1868.**  
 3. The provisions of *The Companies Act, 1866*, and *The Companies Act, 1868*, in so far as the same can be made applicable to companies under this Act, shall extend to such companies in the same manner as if such companies had been formed and incorporated under the aforesaid Acts.

**Grants, leases, or conveyances of lands already made deemed valid. Proviso.**  
 4. [As amended by 58 Vic. c. 10, § 1]. Where grants, leases, or conveyances of lands within these Islands have been made and issued prior to the passing of this Act to any company formed and incorporated without these Islands for the purposes set out in the first clause of this Act, such grants, leases, and conveyances shall be valid and effectual for the purposes of this Act as if the same had been made and issued after the passing hereof. Provided, that every such company, shall, within seven years after the passing hereof, observe and fulfil the conditions A and B in the first section of this Act, required to be performed by a company described therein, and where such conditions have been fulfilled the other provisions of this Act shall apply to companies mentioned therein<sup>1</sup>).

**Short title.** 5. *The Foreign Companies Land Act, 1891.*<sup>1</sup>)

d) 58 Vic. c. 10. An Act to amend the Act of Assembly 54 Victoria, Chapter 3, enabling Companies formed without the Colony to hold Lands therein (26th April, 1895).

[Amends 54 Vic. c. 3, § 4, and is there incorporated.]

### Sale of Goods.

4 Edw. 7, c. 37. An Act for codifying the Law relating to the Sale of Goods (9th June, 1904).

[This Act is identical in all material respects with the Imperial *Sale of Goods Act, 1893*, (56 & 57 Vic. c. 71).]

### Factors.

4 Edw. 7, c. 7. An Act to amend and codify the Law relating to Mercantile Agents (2d May, 1904).

[1—13. This Act is identical in all material respects with the Imperial *Factors Act, 1889*, (52 & 53 Vic. c. 45).]

### Bills of Lading.

[The Imperial *Bills of Lading Act* (18 & 19 Vic. c. 111) was extended to the Bahamas by 23 Vic. c. 23.]

A clause in a bill of lading that "goods which cannot be found for delivery during the steamer's stay at port of destination are to be forwarded by the first opportunity when found," requires the exercise of due care to forward as soon as found. A carrier cannot exempt himself from liability for insufficiency of packing where such defective packing is patent or visible. It is the duty of the carrier either to refuse goods which are patently packed in an insufficient manner, or to carry them at his risk for loss occasioned thereby. — *Young v. New York and Cuba Mail S.S. Co.*, (1901), 1 Bah. L.R. 99.

<sup>1</sup>) Title added by 4 Edw. 7, c. 39.

### Marine Insurance.

#### 7 & 8 Edw. 7, c. 39. An Act to codify the Law relating to Marine Insurance (8th June, 1908).

[This Act is identical in all material respects with the Imperial *Marine Insurance Act, 1906*, (6 Edw. 7, c. 41).]

### Bills of Exchange.

#### a) 22 Vic. c. 17. An Act to repeal the Act of Assembly, 41 Geo. 3, c. 3, and to make other Provisions regulating the Charging of Interest on Moneys and the Recovery of Damages on protested Bills of Exchange (30th April, 1859).

[1—2. Relate to interest.]

£ 20 per £ 100 damages on bills of exchange drawn on any part of Europe and not honoured. 3. That for all bills of exchange drawn or negotiated within these Islands upon any part of Europe, which shall be returned under protest for want of acceptance or payment or for any other cause, there shall be paid upon all such bills so protested and returned as aforesaid, a re-exchange as damages for the same, at the rate of twenty pounds per centum, and in case of non-payment of such protested bills and damages within three days after demand being made by the possessor of such bill from the drawer or indorser, then the said bill together with the damages thereon shall bear the legal interest at and after the rate of six pounds per centum per annum aforesaid.

£ 15 per £ 100 damages on bills of exchange drawn on any other place out of the Colony than Europe. 4. That all bills of exchange drawn or negotiated within these Islands, upon any place out of the Colony other than in Europe, which shall be returned under protest for either of the causes before mentioned, there shall be paid upon all such bills as aforesaid a re-exchange as damages for the same at the rate of fifteen pounds per centum, and in case of non-payment of such protested bill with damages as last aforesaid, within three days after demand being made by the possessor of such bill, from the drawer or indorser, then the said bill together with the damages thereon shall bear legal interest at and after the rate aforesaid.

Short title. 5. *The Bills of Exchange Act, 1859.*<sup>1)</sup>

#### b) 55 Vic. c. 5. An Act to extend to these Islands the Imperial Bills of Exchange Act, 1882 (8th April, 1892).

**Imperial Bills of Exchange Act, 1882, declared in force with certain changes.** 1. The Imperial *Bills of Exchange Act, 1882*, shall be and the same is hereby declared to be in force in these Islands in the same manner as if the said statute contained words expressly extending its operation to the Bahama Islands, subject, however, to the changes made therein by the other sections of this Act, and excepting those portions set out in the Schedule attached thereto.

**Words changed.** 2. Whenever the words "United Kingdom" or "British Islands" appear in the said Act, they shall be read "Bahama Islands."

**Construction of certain words.** 3. Wherever the words, "a day appointed by royal proclamation as a public fast or thanksgiving day" appear in the said Act they shall be read and construed to mean any day set apart as a public holiday according to the laws of these Islands.

**Figures changed.** 4. In the third subsection of section ninety-seven the figures "1870" and "1862" shall be respectively read "1877" and "1866".

Short title. 5. *The Bills of Exchange Act, 1892.*<sup>2)</sup>

<sup>1)</sup> Title added by 4 Edw. 7, c. 39. — <sup>2)</sup> Title added by 4 Edw. 7, c. 39.



*Schedule.*

Section four from "For the purposes of this Act" to the end of the section.

Subsection a of section fourteen the words "Royal proclamation as a public fast or thanksgiving day", and the words "except in the case hereinafter provided for."

Subsection b of section fourteen.

Section fifty-three from the words, "This subsection" to the end of the section.

Subsection b of section ninety-two.

Subsections c and d of section ninety-seven.

Sections ninety-eight and one hundred.

**c) 7 & 8 Edw. 7, c. 15. An Act to amend Section 82 of the Imperial Bills of Exchange Act, 1882, as extended to the Colony (8th June, 1908).**

[This Act amends § 82 of the Imperial Act as extended to the Colony so as to incorporate the provisions of the Imperial *Bills of Exchange (Crossed Cheques) Act, 1907*, (6 Edw. 7, c. 17).]

**Public Holidays.**

**1 Geo. 5, c. 2. An Act to consolidate and amend the Law relating to Public Holidays and regulating the Hours of Attendance of Public Officers (10th April, 1911).**

[This Act, which contains no provisions in reference to the presentment, payment, or notice of dishonour of bills of exchange, declares the following days to be bank and public holidays: 1st January, Good Friday, 24th May, the first Monday in August, Christmas day, and the birthdays of the King or prince consort, the Queen or queen consort, and the Prince of Wales. When any holiday falls on a Sunday the following day is public holiday.]

**Bankruptcy.**

**a) 33 Vic. c. 9. An Act for the Abolition of Imprisonment for Debt, for the Punishment of Fraudulent Debtors, and for other Purposes (15th March, 1870).**

[This Act provides for the punishment of fraudulent bankruptcies, and enacts that warrants of attorney and cognovits actionem must be signed by an attorney who has informed the person executing the same of the nature and effects thereof.]

**b) 33 Vic. c. 13. An Act to consolidate and amend the Law of Bankruptcy (15th March, 1870).**

[For a statement of some of the principal provisions of this Act see the section on Law in force, *supra*.]

**c) 34 Vic. c. 5. An Act to amend The Bankruptcy Act, 1870 (7th March, 1871).**

[This Act authorizes the arrest of debtors after summons, and before a petition of bankruptcy can be granted, where there is probable ground for belief that the debtor is about to quit the Colony in order to avoid service of process.]

**d) 35 Vic. c. 5. An Act to explain Act 33 Vic. c. 9, for the Abolition of Imprisonment for Debt and for the Punishment of Fraudulent Debtors (14th March, 1872).**

# Barbados.

## Introduction.

### History and government.

This Colony was acquired by settlement and the English common law prevails.

The Barbados Act to provide for the celebration of the Tercentenary of the first taking possession of Barbados by Englishmen by setting apart a day to be observed as a public holiday (Act of Assembly, 1905, No. 29) in its preamble recites that in 1605 the passengers and crew of the English ship "Olive Blossom" landed and took possession of the island for their sovereign by erecting a cross and cutting on the bark of a tree the words and letters "James K. of E. and this island": that no settlement was then made: that the possession so taken was never challenged by any other power: that Barbados remained in the constructive possession of the Crown of England until, after the lapse of some twenty years, actual and permanent possession was taken and that the island had never during three hundred years been out of the possession of the Crown of England, or subject to foreign rule.

The historic fact that Barbados was acquired by the settlement of British subjects who on settling there became entitled to enjoy all the rights, liberties, and privileges they had possessed in England, makes it clear that the English common law, written and unwritten, at the date of the first settlement became the law of the community until varied by the House of Assembly. This House of Assembly by the Royal Charter of Charles I. dated 1627 to the Earl of Carlisle possesses irrevocably as against the Crown the right of self-taxation and self-legislation. The King by this Charter recognized that the laws were to be made "*de et cum consilio, assensu, et approbatione liberorum tenentium ejusdem provincie, vel majoris partis eorumdem.*"

### Courts and procedure.

**Legal Procedure.** The Common Pleas Act, No. 18—1911, consolidates and amends the Acts of the island relating to the Court of Common Pleas. It constitutes one Court of Common Pleas for the island to be called "The Court of Common Pleas for Barbados" and to have cognizance of all pleas and jurisdiction in all cases as fully and amply in the island of Barbados as the Courts of Common Pleas, Queen's Bench and Exchequer lawfully had in England on the 29th July, 1853.

The Court consists of the Chief Judge and the sittings are held in Bridgetown on the days appointed by the Act. But for the despatch of such business as may be transacted without a jury the Judge is empowered to sit either in Court, or at his Chambers, on such days as he may appoint and by public notice declare.

**Procedure in Chancery.** The Chancery Act, No. 5—1906, enacts that the chief judge of Barbados shall be Vice-Chancellor of Barbados and shall have power to hear and determine all causes, matters, and things depending in the Court of Chancery, either as a Court of Law, or as a Court of Equity. The Court of Chancery thus constituted is to determine any questions of law which in the judgment of the Court are necessary to be decided previously to the decision of the equitable question at issue between the parties. In all cases where equitable relief or remedy is sought, whether the title to such relief or remedy is or is not dependent upon a legal right, every question of law or fact cognizable in a Court of Common Law, on the determination of which the title to such relief or remedy depends, is to be determined by or before the Court. The Act consolidates and repeals all Acts relating to the Court of Chancery and prescribes the procedure from the first issue of the Writ to the final decree and the proceedings thereon. Appeals lie to the Court of Appeal. (*Vide infra.*)

**The Court of Appeal.** The present Court of Appeal in Barbados stands established by the conjoint operation of Royal Orders in Council and Acts of the Imperial Parliament and the Colony's Legislature.

By the Imperial Act of 1850, (13 & 14 Vic. c. 15), the Queen in Council was empowered to give effect by Order in Council to any Act of (inter alia) the Barbados legislature making provisions for the Court of Appeal for the Colony in pursuance of



the enabling powers contained in the Imperial Act. Pursuant to this Act the Barbados legislature by their Act, 1857, No. 1, made provisions for the establishment of a Court of Appeal to consist of the Chief Justices of Barbados, St. Lucia, St. Vincent, Grenada, and Tobago. The Court is a Court of Record, sitting in Bridgetown, Barbados, and entertains appeals against judgments, decrees, etc., of the Chief Justice of Barbados in his legal, equitable and ecclesiastical jurisdiction. By an Order in Council made on 3rd March, 1859, the Court of Appeal, thus provisionally created by the Barbados Act, is established under the name of "The Court of Appeal of the Windward Islands." Pursuant to the Imperial Act of 1850 the Order gives power for any person by leave of the Court to appeal to the Privy Council from any final judgment, etc., of the Court of Appeal in cases where the sum, claim, or matter at issue, is of or above the amount or value of £300.

Consequent upon Tobago being annexed to Trinidad by Imperial Act of 1887 the House of Assembly passed an Act (No. 11—1890) amending the Barbados Court of Appeal Act of 1857 by making the Court consist of the Chief Justices of Barbados and Grenada, and the Chief Justice of St. Vincent and St. Lucia. The amendment is in fact the exclusion of the Chief Justice of Tobago. By an Order in Council made on 9th February, 1901, the original order in Council of 3d March, 1859, was amended by excluding the Chief Justice of Tobago from being one of the judges of the Court of Appeal.

### Law in force.

**Contracts.** The English common law is followed in questions arising out of contract. Among the Barbados Acts having reference to contracts are the following:

The Currency Act, (No. 1—1848), declares that the currency of the United Kingdom of Great Britain and Ireland shall be the currency of Barbados and all contracts involving payment of money are to be executed according to the currency of the United Kingdom so becoming the currency of the island.

The Act for the Prevention of Frauds and Perjuries, (No. 1—1762), enacts that no action shall be brought to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person or to charge any person upon any agreement (*inter alia*) that is not to be performed within one year from the making thereof unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized.

Contracts by infants, whether by specialty or by simple contract, for the repayment of money lent or for goods supplied (other than contracts for necessaries) are by the Infants Relief Act of 1881 made absolutely void.

Gaming contracts, being contracts where the consideration or any part shall be for money won by gaming, etc., or betting, etc., are by the Gaming Act, (No. 4—1891), made utterly void and of none effect.

**Contracts by Married Women.** A married woman is by the Married Woman's Act, (No. 33—1891), made capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract and of suing and of being sued thereon in all respects as if she were a *femme sole*, and her husband need not be joined with her as plaintiff or defendant. By the Married Woman's Amendment Act, 1896, (No. 32—1896), bearing date 22d October, 1896 it is enacted that every contract thereafter entered into by a married woman otherwise than as agent shall bind her separate property then possessed by her or at any time thereafter coming into her possession, and such liability may be enforced by legal process against all property which she may thereafter while discoverd be possessed of or entitled to, but not to affect property subject to restraint of anticipation. By further Act of Assembly, (No. 22—1899), the Court of Chancery may by judgment or order with consent of the married woman bind her interest in any property notwithstanding she is subject to a restraint upon anticipation.

**Contract for Dutiable Goods.** By the Trade Act of 1910, (No. 15—1910, § 183), in the event of a change in the duties of customs chargeable upon goods after the making of any contract for the sale or delivery of the goods duty-paid, the seller, in case of increase of duty before clearance and delivery at such increased duty and after payment thereof, may add so much money to the contract prices as shall be equivalent to such increase of duty and he shall be entitled to be paid and to sue for and recover the same.

The purchaser of goods under any contract for the sale or delivery of goods duty-paid may, in case a decrease or repeal of duty shall take effect before the clearance and delivery of the goods at such decreased duty, or free from duty, as the case may be, deduct so much money from the contract price as will be equivalent to such decrease of duty or repealed duty, and he shall not be liable to pay or be sued for or in respect of such deduction.

**Rum Contracts.** By the Rum Duty Act, (No. 11—1892), it is enacted that in the event of any increase, decrease or repeal of the duty on rum after the making of any contract for the sale or delivery of such rum duty paid, it shall be lawful for either the seller or the buyer by notice given the one to the other to cancel the contract so far as it remains unexecuted, provided that the seller may recover the contract price of any rum delivered prior to the cancellation of the contract and the buyer may enforce delivery at the contract price of any rum for which he shall have fully paid before the avoidance of the contract.

**Agency.** The decisions of questions of agency by the Barbadian courts is based upon the principles of common law and equity which govern the decisions of the English courts. Frauds and embezzlement by Agents or Factors are criminal acts punishable as such by the Larceny Act, 1868, (No. 1—1868). The provisions in this respect of this Barbadian Act are similar to those already referred to in the Bahamas Act of Assembly, 28 Vict. Cap. 37.

Powers of attorney constituting any person the agent of another, for the purposes set forth in the writing or document creating such power, by the "Property and Conveyancing Act, 1891" operate so as to save and indemnify any person making a payment or doing an act in good faith in pursuance of the power, before the event of the death, lunacy, insanity, or bankruptcy of, or revocation by, the creator of the power, has become known to such person.

**Partnership.** The Common Law and decisions of the English courts in all matters of partnership are followed by the Barbadian courts. There does not appear on the Barbadian Statute Book, up to and including the year 1911, any Act of Barbados having any exclusive and special reference to partnerships. The law of partnership as expounded in the Partnership (Imperial) Act, 1890, (53 & 54 Vic. c. 39), indicates generally the existing law in Barbados, because that Act is based on the judicial decisions of equity and common law courts in relation to partnerships.

Limited partnerships are not to be found in the Statute Books of Barbados up to and inclusive of the year 1911.

**Companies.** Before the adoption by the House of Assembly in 1892 of the principles of the imperial legislation under the Companies Act the Barbados Statute Book had no general legislation in respect of Public Companies. By the Larceny (Consolidation) Act of 1868, directors, members, managers, and other officers of companies are made penally liable for fraudulent appropriation, keeping fraudulent accounts, etc.

The Companies Act, 1910 enables any five or more persons to form an incorporated company with or without limited liability. The Act follows the Imperial Companies (Consolidation) Act, 1908.

**Sale of Goods.** The Sale of Goods Act, 1895, (No. 9—1895), follows the Imperial Sale of Goods Act, 1893, (56 & 57 Vic. c. 71), with some variations. It omits the 4th section of the Imperial Act, which makes contracts for the sale of goods of the value of £10 and upwards not enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf. The provision as to sale in market overt contained in the 22nd section of the Imperial Act is also omitted. The 26th section of the Imperial Act, as to the effect of writs of execution, is varied so as to accord with the provisions of the Provost Marshal's Act of 1891, and executions thereunder by the Provost Marshal.

The English code of law on the sale of goods, as established by the Imperial Act, is now, by virtue of Barbadian Act, the law in Barbados. But it must be remembered that the Statute of Frauds, (29 Car. II. c. 3), was passed in 1676 after Barbados had become a settled Colony; it therefore could not extend to the Colony, nor has it been adopted by the Barbadian legislature; therefore the 17th section of this Statute, as to contracts for the sale of goods, has no equivalent in the law of Barbados; hence the omission above noted in the Colony's Sale of Goods Act, 1895, of the 4th section



of the Imperial Sale of Goods Act, which was the virtual reproduction of the 17th section of the Statute of Frauds and an amendment thereof by Section 7 of 9 George IV. c. 14.

In the result the original Common Law prevails, whereby all that is required to give validity to a contract for the sale of goods, is, irrespective of amount of price or value, the mutual assent of the parties to the contract, provable by verbal or written evidence.

**Common Carriers.** The Barbados Statute Books contain no Common Carriers Act. The law as to carriage of goods on land in the Colony follows therefore the English common law.

**Factors.** The law relating to factors and other mercantile agents is not the subject of any special legislation. The Imperial Factors Act of 1889 has not been extended to the Colony by Act of Assembly and this being so the principles of the English common law and equity govern cases of agency in respect of factors and mercantile agents.

Under the Larceny Consolidation Act, No. (1—1868, S. 63), merchants, brokers, and other agents fraudulently selling securities or goods entrusted to them are made guilty of a misdemeanour and on conviction become liable to penal servitude.

**Merchandise Marks.** By Act of Assembly, (No. 3—1889), the Imperial Merchandise Marks Act, 1887, is, with slight variations to suit local jurisdiction and procedure, extended to the Colony. An amending Act of Assembly, (No. 7—1896), extends the provisions of the principal Act to proprietary trade marks registered at the record branch of the Colonial Secretary's office in the Colony. It regulates the registration in the Colony of proprietary trade marks, imposes certain restrictions as to the user of the registered trade marks and their assignment. A further slight amendment is made by the Merchandise Marks (Amendment) Act, 1897, which requires the trade marks to be shewn in some particular or distinctive manner.

**Imports and Exports.** The Trade Act, 1910, as amended by No. 4—1911, contains 173 Sections and several Schedules. It is divided into eleven parts as follows: Part I: Ports and Quays. Part II: Entry and Clearance Ships. Part III: Tonnage Dues. Part IV: Importation. Part V: Warehousing. Part VI: Exportation. Part VII: Passengers and Baggage. Part VIII: Bilge water. Part IX: Smuggling. Part X: Legal Procedure. Part XI: Miscellaneous.

Under the above divisions the Act regulates the import and export trade of Barbados.

**Bills of Exchange.** The Bills of Exchange Act, 1893 (No. 7—1893), extends to Barbados the Imperial Act of 1882, (45 & 46 Vict. c. 41). The Colonial Act omits section 94 of the Imperial Act, whereby when the services of a notary cannot be obtained, a householder in the presence of two witnesses may give a certificate to be signed by them attesting the dishonour of the bill. The schedule of the Imperial Act containing a form of protest is not included. There is no repealing clause in the Act. Therefore it would seem that the following Acts of Assembly remain in force.

Act 1754—1. An Act to reduce the rate of interest to six per cent. per annum on all loans and to allow ten per cent. for damages and interest upon bills protested.

Act 1848—1. An Act to provide for the assimilation of the Barbados Currency and Moneys to the currency and moneys of the United Kingdom, whereby all bills, etc., after the commencement of the Act are to be paid, discharged and satisfied in the currency of the United Kingdom.

Act 1890—17. The Colonial Secretary's Office Act 1890 empowers the Colonial Secretary to act as notary public to protest bills of exchange for non-acceptance or for non-payment.

Act 1891—5. The Gaming Act 1891 makes all notes, bills &c. given for gaming debts utterly void.

Act 1890—30. The Petty Debt Act 1890 makes bills of exchange, promissory notes etc., liable to seizure on an execution for debt and to subsequent realization by the execution creditor.

Act 1891—52. The Provost Marshal's Act 1891 requires the Provost Marshal to hold any promissory notes, bills of exchange, etc., attached by him under any writ of execution as security for the amount of the execution in his office against the judgment debtor and enables the Provost Marshal to sue and recover the amount of such notes and bills.

By Act 1907—36 the Bills of Exchange Act, 1893 was amended in its Section 82 as to bankers' cheques.

**Maritime Law.** The maritime law for the colony follows the maritime law of the English Admiralty Court.

**Affreightment.** Contracts of affreightment are governed by the English common law and the decisions of English Courts.

The Bills of Lading, Act, 1892, transfers to every consignee named in, and indorsee of a bill of lading — to whom the property in the goods therein shall pass by such consignment or indorsement — all rights of suit, and subjects such consignee or indorsee to the same liabilities as if the bill of lading had been made with him. It makes bills of lading in the hands of a consignee or indorsee conclusive evidence of shipment as against the master or other person signing the same. In any proceedings in the colony against owner or charterer of any ship or other person in respect of any bill of lading or contract of affreightment relating to merchandize brought to the Colony by such ship the agent in the colony of the owner or charterer or, if there be no such agent, the master of the ship is to be the agent of such owner or charterer, on whom all process issued in proceedings taken against such owner or charterer is to be served, and such agent or master is to represent the owner or charterer, and the proceedings are to be binding on the owners or charterers. Moneys in the hands of such agent or master belonging to the owner or charterer are for the purposes of the Act to be deemed a debt within the Judgment Creditors Remedies Act, 1891, and the agent or master is for the purpose of that Act to be deemed a garnishee.

**Marine Insurance.** The law in Barbados on marine insurance follows the English common law. The fact that the local legislature has not extended to the colony the Marine Insurance Act, 1906, (6 Edw. 7, Ch. 41), does not prevent questions of marine insurance being determined by that Act, so far as it is an Act to codify the Law relating to marine insurance.

**Average.** The law as to average in Barbados is the same as the English law.

**Maritime Liens.** Claims upon a maritime res, i. e., ship, freight, or cargo which may arise ex contractu, such as salvage, or ex delicto, such as compensation for damage by collision if enforced in the Colonial Court of Admiralty by arrest in Admiralty are adjudicated upon by English law.

**Bottomry and Respondentia.** Contracts of bottomry and respondentia are adjudicated upon in the Colony according to English law.

**Collisions.** Claims for damages arising from collision are adjudicated upon in accordance with the principles of maritime law adopted by the English Admiralty Court.

**Bankruptcy.** The Debtors Act, 1879, (No. 4—1879), provides for the abolition of imprisonment for debt with certain exceptions and for the punishment of fraudulent debtors. This enactment extends to Barbados, with necessary variations to meet the local circumstances, the (Imperial) Debtors Act, 1869, (32 & 33 Vict. Chap. 62).

The Bankruptcy Act, 1892, (No. 3—1892), enables the Governor to appoint an Official Assignee in bankruptcy whose duties and remuneration are regulated by the Act. A creditor or creditors in a debt of not less than £50 may present a bankruptcy petition alleging as grounds for the petition any one or more of the certain acts or defaults therein specified and referred to as "acts of bankruptcy." A debtor may present a bankruptcy petition against himself, therein alleging that he is unable to pay his debts. All bankruptcy petitions must be verified on oath by affidavits. Upon an order for bankruptcy having been made the bankrupt must deliver to the Official Assignee a statement of affairs made out in the form prescribed by the Act. When an order of bankruptcy has been made against a debtor his adjudication as bankrupt must be gazetted and a public sitting be held by the Court to examine into the affairs of the bankrupt. All property whatsoever of the bankrupt, when an order for bankruptcy is made, vests absolutely without conveyance or assignment in the Official Assignee. The commencement of the bankruptcy relates back to the date of the act of bankruptcy on which the petition was based. Further provisions of the Act relate to the discharge of the bankrupt, the effect of his discharge, the administration by the Official Assignee under the control of the Court of the bankrupt's estate, and the proof of debts. The property of the bankrupt divisible amongst his creditors and vesting in the Official Assignee comprises property



belonging to the bankrupt at the commencement of the bankruptcy or devolving upon him previously to his discharge, all powers exercisable by the bankrupt over property for his benefit at commencement of the bankruptcy, and all goods and chattels at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt by the permission of the true owner, but not property held in trust for any other person than his creditors, or trade tools, and wearing apparel &c not exceeding £20 in all. Any voluntary settlement, if the settlor becomes bankrupt within two years after date of the settlement, is to be void and if the settlor becomes bankrupt within five years of the date of the settlement it is to be void unless beneficiaries under the settlement can prove that the settlor at the date of the settlement was able to pay all his debts without the aid of the property in the settlement.

The remaining provisions of the Act, comprised in sections 60 to 107 inclusive, relate to fraudulent preference, debts provable against bankrupt's estate, compositions and schemes of arrangement, secured creditors, mutual dealings and set-off, calculation and distribution of dividends, discovery of property, arrest of bankrupt, liability in respect of her separate estate and rights in respect of debts of married women under the Act, offences against bankruptcy law and punishment thereof.

The Bankruptcy (Amendment) Act, 1898, (No. 7—1898), provides that in all cases in which the Official Assignee is authorised to sell the real estate of any bankrupt under the provisions of the principal Act of 1892 his receipt shall be an absolute discharge to the purchasers, and the conveyance by the Official Assignee shall effectually pass the real estate thereby conveyed discharged from liens and incumbrances of all persons (including the Crown and parochial authorities) save and except such as are specified in the conveyance and subject to which the Official Assignee shall have made the conveyance. Such conveyance shall, without the joinder as parties of any persons having a mortgage or other legal or equitable lien on the property pass the property to the purchasers as effectually as if the said persons had executed the conveyance. The signature of the Official Assignee to the conveyance shall be conclusive evidence that all the provisions of the principal Act and this amending Act and all necessary proceedings thereunder have been complied with and duly taken. The Bankruptcy (Amendment) Act, 1903, (No. 19—1903), gives priority of payment next after Crown debts to public taxes or rates imposed by law, due from the bankrupt at the date of bankruptcy, not exceeding one year's taxes or rates. The Bankruptcy (Amendment) Act, 1903 (No. 47—1903), enables the Court to stay any action, execution or other legal process against the bankrupt or on such terms as the Court deems just to allow them to continue. The provisions of the principal Act of 1892 relating to remedies against the property of the debtor, the priorities of debts, the effect of a composition or scheme of arrangement and of a discharge are to be binding on the Crown.

Bankruptcy proceedings may be taken by a petitioning creditor against the legal representatives of a deceased debtor: and on an order by the Court to administer the estate in bankruptcy being made the deceased debtor's property vests in Official Assignee and is administered as in case of ordinary bankruptcy subject to preferential payment of the funeral and testamentary expenses of the deceased debtor, and any surplus remaining after payment of debts in full is to be paid over by the Official Assignee to the legal personal representatives of the deceased debtor.

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**Bowell, Henry A., and Greaves, W. Herbert: Laws of Barbados. Barbados. 1893.**

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Name of report.	No. of volumes.	Period.	Method of citation.
Greaves and Clarke	1	1694—1893	1 Barb.
Field	1	1860—1903	2 Barb.

## Statutes.

### Companies.

- a) No. 30 of 1910. An Act to provide for the Incorporation, Management, and Winding-up of Trading Companies and other Associations (22d November, 1910).**

[This Act is in general identical with the Imperial *Companies (Consolidation) Act, 1908*, (8 Edw. 7 c. 69).]

- b) No. 23 of 1911. An Act to amend the Companies Act, 1910 (1910—30) (28th August, 1911).**

[This Act makes certain verbal changes in the principal Act, and extends the periods in §§ 87 and 91 to 3 months.]

### Sale of Goods.

- No. 9 of 1895. An Act for codifying the Law relating to the Sale of Goods (7th May, 1885).**

[This Act is identical in all material respects with the Imperial *Sale of Goods Act, 1893*, (56 & 57 Vic. c. 71). There is no provision in regard to market overt.]

Semble, a sale in a shop in Bridgetown is not a sale in market overt. — *Boxill v. Bowen*, (1860), 2 Barb. 82.

### Bills of Lading.

- No. 1 of 1892. An Act the consolatate and amend to Law relating to Bills of Lading (15th January, 1892).**

[1—4. Are identical in all material respects with the Imperial *Bills of Lading Act*, (18 & 19 Vic. c. 111).]

- Who to represent owner or charterer of ship in proceedings on bill of lading.**  
**5. In any proceedings taken in this Island against the owner or charterer of any ship or other person in respect of any bill of lading or other contract of affreightment**

<sup>1)</sup> See also Windward Islands.



relating to goods and merchandize brought to this Island by any such ship as aforesaid, the recognized or ostensible agent in this Island of such owner, charterer, or other person or if no such agent the master of such ship shall be deemed and taken to be the legally qualified agent of such owner, charterer, or other person on whom all process issued in proceedings taken against such owner, charterer, or other person shall be served, and such agent or master shall in all respects represent such owner, charterer, or other person in any such proceedings, and all such proceedings shall be binding on the owners and charterers or other person as aforesaid.

**Moneys in hands of representative may be attached.** 6. Moneys in the hands of or coming to such agent or master as aforesaid belonging or payable to such owner, charterer, or other person as aforesaid, shall for the purpose of this Act be deemed to be a debt within the meaning of *The Judgment Creditors Remedies Act, 1891*, and the agent or master for the purposes of that Act be deemed to be garnishees within the meaning of the said Act.

[7. Repeals the *Bills of Lading Act, 1879*, and provides that the present Act shall not be retrospective in its operation.]

### Bills of Exchange.

- a) No. 7 of 1893. An Act to codify the Law relating to Bills of Exchange, Cheques, and Promissory Notes (13th April, 1893).

[This Act is identical in all material respects with the Imperial *Bills of Exchange Act, 1882*, (45 & 46 Vic. c. 61).]

As to what constitutes a reasonable time for notice of dishonour, see *Colonial Bank v. Crumpton*, (1864), 1 Barb. 62.

- b) No. 36 of 1907. An Act to amend the Bills of Exchange Act, 1893 (1893—7) (18th July, 1907).

[This Act is identical in all material respects with the Imperial *Bills of Exchange (Crossed Cheques) Act, 1907*, (6 Edw. 7 c. 17).]

### Bank Holidays.

- a) No. 3 of 1905. An Act to consolidate and amend the Acts relating to Bank Holidays (28th February, 1905).

- b) No. 19 of 1910. An Act to amend the Bank Holidays Act, 1905 (1905—4) (28th October, 1910).

- c) No. 33 of 1910. An Act to amend the Bank Holidays Act, 1905 (1905—4) (22d November, 1910).

[These Acts contain the usual provisions in regard to the presentment, payment, etc., of bills of exchange. The following days are declared to be bank holidays: 1st January, Easter Monday, Whit Monday, 24th May, the first Monday in August, the first Monday in October, 9th November, the birthday of the sovereign, 26th December. If the 1st January, 24th May, 9th November, or 26th December fall on a Sunday, the next following Monday is a bank holiday. If Christmas day falls on a Sunday the next following Tuesday is a bank holiday.]

### Bankruptcy.

- a) No. 4 of 1879. An Act for the Abolition of Imprisonment for debt and for the Punishment of Fraudulent Debtors (3d November, 1879).
- b) No. 34 of 1900. An Act to amend the Debtors Act, 1879 (1879—4) (9th November, 1900).
- c) No. 3 of 1892. An Act to establish a Bankruptcy Law (26th January, 1892).
- d) No. 7 of 1898. An Act to amend an Act to establish a Bankruptcy Law (1st February, 1898).
- e) No. 30 1902. An Act to attach a Salary to the Office of Official Assignee (20th August, 1902).
- f) No. 19 of 1903. An Act to further amend the Bankruptcy Act, 1892 (1892—3), (13th February, 1903).
- g) An Act to amend the Bankruptcy Act, 1892 (1892—3) (11th November, 1903).

[A summary of the principal provisions of these Act will be found, *supra*, in the section on Law in force.]

## The Leeward Islands.

### Introduction.

#### History and government.

The British Leeward Islands, comprising Antigua (with its dependencies Barbuda and Redonda), Montserrat, St. Christopher, Nevis (including Anguilla), Dominica, and the Virgin Islands, were constituted the single Federal Colony of 'The Leeward Islands' in 1871 by an Act of the Imperial Parliament, 34 & 35 Vict. c. 107. This Act, after reciting that the several legislative bodies of the Leeward Islands had by resolutions signified their desire for a union under one government, and that their resolutions for such a union should be embodied in an Imperial Act with provisions necessary to give them effect, constituted a legislative body for the Leeward Islands, styled "The General Legislative Council", and empowered the Governor with the consent of this Council to make laws for the Leeward Islands or any part thereof on the following subjects: 1. The Law of real and personal property; 2. The Mercantile Law; 3. The Law of husband and wife, parent and child, marriage, divorce, and guardianship; 4. The Criminal Law; 5. The constitution of Courts of Law, the criminal and civil administration of justice, including the jurisdiction, practice, and procedure of all courts of law, criminal and civil; 6. Prisons; 7. Police; 8. Postal and Telegraphic administration; 9. Quarantine; 10. Currency; 11. Weights and Measures; 12. Audit of Public Accounts; 13. Education; 14. Immigration;



15. Lunacy; 16. Copyrights and Patents; 17. The constitution and procedure of the Council; 18. Subjects referred to the Council by the legislature of any Presidency.

Subject to repeal or variation by the General Legislative Council the Governor, with the consent of the Legislative Body of any presidency, was empowered to make laws for the peace, order, and good government thereof.

Laws passed by the Council might be disallowed by the Crown within eighteen months from the date of the copy received by the Imperial Secretary of State. Laws reserved for the assent of the Crown were to come into operation by Royal Order in Council and Proclamation of the Governor. By Royal Letters Patent dated 17th July 1869 the island of Rodenda was included in the Governorship of the Leeward Islands and annexed to the island of Antigua. By Royal Letters Patent dated 2nd October, 1902 after revocation of the existing Letters Patent dated 20th February, 1895 it was declared: That there should be a Governor and Commander-in-Chief in and over the colony of the Leeward Islands to be appointed by Commission under the Royal Sign Manual and Signet, and with such Powers and Authorities as belonged to the Office by the provisions of the Imperial and Colonial Acts, (34 & 35 Vic. c. 107, Imperial) and No. 1, 1899, (Leeward Islands Act), and the Royal Letters Patent, Commission, Instructions, and Orders in Council.

By Royal Letters Patent dated June 9th, 1898, effect was given to an Act of the legislature of Antigua, (No. 1, 1898), enabling the Crown to appoint members of the legislative Council of Antigua either directly by Royal Instructions or Warrant, or by delegation to the Governor of the Leeward Islands. The powers so vested in the Crown were delegated to the Governor with reservation of a power of revocation and amendment.

By Letters Patent dated 7th November 1898, the Crown delegated to the Governor the exercise of the power given to the Crown by the legislature of Dominica (The Constitution Act, 1898) of appointing members of the Legislative Council of Dominica.

The Antigua Act (No. 1) of 1898 constitutes a Legislative Council for the island.

The Dominica Act (No. 4) of 1898 abrogates the Legislative Assembly as re-constituted by Act (No. 4) of 1895 and creates a Legislative Council for the island.

By a Dominica Ordinance (No. 2) of 1899 the Legislative Council of Dominica amended its constitution.

The Constitution of St. Christopher and Nevis was amended by the Leeward Islands Acts (No. 2) of 1882, under which they were united into one Presidency, and (No. 7) of 1900 under which, pursuant to an enabling Ordinance of St. Christopher and Nevis (No. 1) of 1900, the Legislative Council of St. Christopher and Nevis was constituted.

The Constitution of The Leeward Islands was amended by Act (No. 1) of 1899 under which The Leeward Islands are to consist of the five Presidencies of Antigua, St. Christopher and Nevis, Dominica, Montserrat and Virgin Islands, confirmed by an Order in Council of 27th December, 1899.

### Law in force.

The common law of England prevails in the Leeward Islands, partly by original settlement and partly by Royal proclamation. The General Assembly in 1706 and again in 1798 expressly declared that the common law of England, as far as it was unaltered by Colonial Act or by Act of Parliament was in force in each of the Leeward Islands. The several islands in the wars between France and England had been captured and recaptured and subsequently restored by the Treaties of Peace.

The Treaty of Breda, 1667, restored to England Antigua and Montserrat and that part of St. Christopher and the other colonies as were possessed by England on 1st January, 1665, before the war, then concluded, began: under the Treaty of Utrecht, 1713, St. Christopher was to be possessed solely by Great Britain: under the Treaty of Paris, 1763, Grenada, St. Vincent, Dominica and Tobago were to remain in full right to England, and by the Treaty of Versailles, 1783, Grenada, St. Vincent, St. Christopher, Nevis and Montserrat were restored to Great Britain. Notwithstanding the period in which the sovereignty of France prevailed, the English

common law does not seem to have been displaced, and on the restoration of English rule any doubts were set at rest either by Royal Proclamation or Legislation. In Art. 22 of the Treaty of Paris it was provided that in law-suits ended in the islands conquered by either of the high contracting parties the judgment pronounced should be confirmed and executed according to their form and tenour. No Article in any of the Treaties makes any stipulation as to the French law.

**Contract.** The English common law prevails throughout the Leeward Islands with respect to contract generally, subject to any Colonial Acts or Ordinance as to forms of contract, evidence and legal procedure.

**Agency.** The law of agency follows English law in the same way as that of contract.

**Partnership.** The Act to amend the Law of Partnership, No. 2, 1888, enacts that the advance of money on a contract to receive a share of profits is not to make the lender a partner. (See similar law, Windward Islands).

**Bills of Exchange.** The Bills of Exchange Act, 1887, follows the Bills of Exchange (Imperial) Act of 1882 and the Bills of Exchange (Crossed Cheques) Act No. 3, 1907, follows the Imperial Act of 1906.

**Banking.** The Bankers' Book Evidence Act, 1881, makes an examined copy of an entry in a banker's book *prima facie* evidence in all legal proceedings if it is proved that the book was at date of the entry one of the ordinary books of the bank and that the entry was made in the ordinary course of business and that the book is in the possession of the banker. Such proof may be oral or by affidavit of a partner or an officer of the bank. Bankers need not in legal proceedings produce books, entries in which can be proved under the Act, but inspection of the same on application of any party may be had on an Order of the Court.

**Companies.** The Companies Act, 1884, is based on the Imperial Act, 1862, and amending Acts of 1867, 1877, 1879 and 1880.

**Bankruptcy.** By the Administration of Insolvent Estates Act of 1887 all specialty and simple contract debts of deceased persons are to stand in equal degree.

The law of bankruptcy is to apply to the administration by the Court of the estates of deceased persons and in the winding-up of companies, where assets are insufficient for payment of debts in full.

The Bankruptcy Act of 1889 (No. 11) amends and consolidates the law of bankruptcy.

**Maritime Law.** Similar to that in the Bahamas and Barbados (*q. v. supra*).

### Local legislation.

The preceding sketch of the constitution and of the mercantile and maritime laws of the Leeward Islands Federation may be supplemented by the following detailed particulars of each of the five presidencies of the federation.

From the year 1871, — when the Imperial Federation Act was passed which created the General Legislative Council and assigned to it the legislative powers over the defined subjects above enumerated —, until the present date, the mercantile and maritime laws of each of the Presidencies must be ascertained from the Acts of the federal legislature so far as they vary the English common law.

Each of the Presidencies has a legislative Council with powers of legislation concurrent with those of the federal legislature; but any island enactment is void if repugnant to an enactment of the federal legislature. The island enactments have since 1871 related chiefly to matters of local revenue, and sanitary and other local subjects.

#### Antigua.

Before 1867 the legislative power in Antigua was vested in the Governor, the Legislative Council, and the Legislative Assembly of the island. In 1866 by an island Act of that year the Council and Assembly were abrogated, and all their powers were vested in the legislative Council of Antigua then constituted.

The laws of Antigua, apart from the enactments of the Federal legislature, must be sought in the statute books of the island. In 1865 an edition of the laws of Antigua from 1668 to 1864, revised by Commissioners appointed by local Act for that purpose, was officially published. This edition and the annual Acts since passed by the island Council must supplement the statute books of the Federal legislature for the ascertainment of the mercantile and maritime laws in operation.



Changes in the constitution of the legislative body were made by Acts Nos. 1 and 10, 1898; Act No. 30, 1899; and Act No. 6, 1903 whereby the whole legislative body was constituted of Crown nominees, of whom eight were official and eight unofficial members.

#### **St. Christopher and Nevis.**

In 1866 by an Act of the legislature of St. Christopher the Council and House of Assembly were abrogated and their powers vested in a single legislative Assembly. In 1877 the legislature of Nevis abrogated the Legislative Assembly and vested its powers in a legislative Council consisting of members nominated by the Crown.

As regards the legislation of Nevis a volume of the Statutes from 1681 to 1861 inclusive, compiled by Hastings Charles Huggins, was published by Authority of the Nevis legislature in 1862.

#### **Dominica.**

An edition of the Statutes up to 1859 was published by Authority in 1860 and except this edition no official compilation or general index of the Acts appears to exist.

#### **Montserrat.**

A volume intitled the Montserrat Code of Laws from 1668 to 1788 was published in London by order of the Council and Assembly of Montserrat in 1790 and except this edition no official compilation or general index of the laws appears to exist.

#### **Virgin Islands.**

This small Presidency has been British since 1666. In 1867 an ordinance was enacted creating a legislative Council and in 1902 by Acts of the legislatures of the Virgin Islands and the Leeward Islands the legislative power over local matters was vested in the Governor of the Leeward Islands.

With reference to the laws of each of the Presidencies one observation is common to them all: namely, that the mercantile and maritime laws of Great Britain prevail except so far as the same are varied by the local legislatures. These local laws must be ascertained by reference to the annual Acts of the several island legislatures prior to the Federation in 1872; and, since 1872, to the annual Acts of the General Legislative Council of the Leeward Islands Federation and the several island legislatures.

#### **Courts and procedure.**

The Supreme Court is both a Court of appeal and a Court of original jurisdiction. This Court has the jurisdiction of the English Courts of Queen's Bench, Chancery, Probate, and Admiralty, at the time of the passing of the Act of Parliament, 37 Vic. c. 66, is a Court of Oyer and Terminer and General Gaol Delivery and has the powers of the Courts of Bankruptcy in London. An appeal lies to the Full Court, sitting as a Court of Appeal, from all final judgments of one or more judges, sitting as a Court of First Instance<sup>1</sup>).

An appeal lies from the Supreme Court to the Privy Council in cases where the amount involved is £500 or upwards. Leave to appeal must be obtained within twenty-one days, and the defendant must furnish security in a sum not exceeding £500 within three months.<sup>2</sup>)

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**Ordinances.** Annual.

#### B. St. Christopher.

**Laws**, 1711—1831. St. Christopher. 1832.

**Abridgment** of the acts of assembly passed in the island of St. Christopher.

**Statutes** of the islands of Saint Christopher and Anguilla. 1711—1856. London. 1857.

**Ordinances.** Annual.<sup>2)</sup>

#### C. Nevis.

**Acts** of assembly passed 1664—1739. London. 1740.

**Huggins**, H. C.: **Laws**, 1681—1861. London. 1862.

**Ordinances.** Annual.<sup>3)</sup>

#### D. Dominica.

**Laws**. 1818—1833. Dominica. 1833.

**Laws** of the island of Dominica. 1763—1859. Dominica. 1858—1860.

**Ordinances.** Annual.<sup>3)</sup>

#### E. Montserrat.

**Acts** of assembly, passed in the island of Montserrat. 1668—1740. London, 1740.

**Code** of laws, 1668—1788. London. 1790.

**Ordinances.** Annual.<sup>3)</sup>

#### F. Virgin Islands.

**Ordinances.** Annual.<sup>3)</sup>

## Statutes.<sup>4)</sup>

### Partnership.

**No. 2 of 1888. An Act to amend the Law of Partnership (31st December, 1888).**

The advance of money on contract to receive a share of profits not to constitute the lenders partner. 1. The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits, arising from carrying on such trade or undertaking, shall not, of itself, constitute the lender a partner with the person or the persons carrying on such trade or undertaking, or render him responsible as such.

The remuneration of agents, etc. by share of profits not to make them partners. 2. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking shall,

<sup>1)</sup> Contains Antigua, 1668—1724. — <sup>2)</sup> Now under St. Christopher and Nevis. — <sup>3)</sup> Published with the Acts of the Leeward Islands. — <sup>4)</sup> As in force 1st January, 1912. The Acts here reprinted are in force in all of the Presidencies.



of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

**Certain annuitants not to be deemed partners.** 3. No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall by reason only of such receipt, be deemed to be a partner of or to be subject to any liabilities incurred by such trader.

**Receipt of profits in consideration of sale of goodwill not to make the seller a partner.** 4. No person receiving by way of annuity or otherwise a portion of the profits of any business, shall, by reason only of such receipt, be deemed to be a partner of or be subject to the liabilities of the person carrying on such business.

**In case of bankruptcy, etc., lender not to rank with other creditors.** 5. In the event of any such trader as aforesaid being adjudged a bankrupt, or taking the benefit of any Act for the relief of insolvent debtors, or entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of his principal, or of the profits or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied.

**Interpretation of "person."** 6. In the construction of this Act the word person shall include a partnership, firm, or joint stock company, and a corporation.

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### Companies.

**No. 20 of 1884. An Act to provide for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations in the Colony of the Leeward Islands (30th December, 1884).**

[This Act incorporates the provisions of the Imperial Acts, 25 & 26 Vic. c. 89; 30 & 31 Vic. c. 131; 40 & 41 Vic. c. 26; 42 & 43 Vic. c. 76; 43 Vic. c. 19; and 46 & 47 Vic. c. 28. The law is substantially as in England.]

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### Factors.

**No. 6 of 1887. The Factors Act (5th March, 1887).**

**Short title.** 1. This Act may be cited as the *Factors Act, 1887*.

**Definitions. Agent. Document of title.** 2. In this Act unless the context otherwise requires: the word "agent" means such agents only as in the usual course of business sell goods for their principals and receive payments, such as factors, brokers etc. The word "document of title" shall include any bill of lading, India warrant, dock warrant, warehouse-keepers' certificate, warrant or order for the delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise either by indorsement or by delivery the possessor of such document to transfer or receive goods thereby represented.

**Person entrusted with goods for consignment or sale and persons in whose names goods are shipped shall be deemed to be the true owners so as to entitle a consignee to a lien on the goods for advances, etc.** 3. Any person entrusted for the purpose of consignment or of sale of any goods, wares, or merchandize and who shall have shipped such goods, wares, or merchandize in his own name, and any person in whose name any goods or merchandize shall be shipped by any other person shall be deemed and taken to be the true owner thereof so far as to entitle the consignee of such goods, wares, and merchandize to a lien thereon in respect of any money or negotiable security or securities advanced or given by such consignee to or for the use of the person in whose name such goods, wares, or merchandize shall be shipped or in respect of any money or negotiable security or securities received by him to the use of such consignee

in the like manner to all intents and purposes as if such person was the true owner of such goods, wares, or merchandize. Provided such consignee shall not have notice by the bill of lading for the delivery of such goods, wares, or merchandize or otherwise at or before the time of the advance of any such money or negotiable security or of such receipt of money or negotiable security in respect of which such lien is claimed that such person so shipping in his own name or in whose name any goods, wares, or merchandize shall be shipped by any person is not the actual and bona fide owner or proprietor of such goods, wares, and merchandize so shipped as aforesaid, any law, usage, or custom to the contrary thereof in anywise notwithstanding. Provided also that the person in whose name any such goods, wares, or merchandize are so shipped as aforesaid shall be taken for the purposes of this Act to have been entrusted therewith for the purposes of consignment or sale, unless the contrary thereof shall be made to appear by bill of discovery or otherwise or be made to appear or be shewn in evidence by any person disputing such fact.

**Persons entrusted with and in possession of bill of lading, etc., to be deemed owner so far as to make valid contracts of sale or pledge without notice valid. Proviso as to notice. Proviso as to antecedent debt.** 4. Any person entrusted with and in possession of any bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, wharfinger's certificate, warrant or order for the delivery of goods shall be deemed and taken to be the true owner of the goods, wares, and merchandize described and mentioned in the said several documents hereinbefore stated respectively or either of them so far as to give validity to any contract or agreement made or entered into by such person so entrusted and in possession as aforesaid with any person for the sale or disposition of the said goods, wares, and merchandize, or any part thereof, or for the deposit or pledge thereof, or any part thereof, as a security for any money or negotiable instrument advanced or given by such person upon the faith of such several documents or either of them. Provided such person shall not (except in the case of an agent hereinafter provided for) have notice by such documents or either of them or otherwise that such person so entrusted as aforesaid, is not the actual and bona fide owner or proprietor of such goods, wares, or merchandize so sold or deposited or pledged as aforesaid, any law, usage, or custom to the contrary thereof in anywise notwithstanding. Provided also, that in case any person shall accept and take any such goods, wares, or merchandize in deposit or pledge from any such person so in possession and entrusted as aforesaid without notice as aforesaid as a security for any debt or demand due and owing from such person so entrusted and in possession as aforesaid to such person before the time of such deposit or pledge, then and in that case such person so accepting or taking such goods, wares, or merchandize in deposit or pledge shall (except in a case where the person so in possession as an agent within the meaning of this Act and can under the provisions of this Act give a further right, title, or interest) acquire not further or other right, title, or interest in or upon or to the said good, wares, or merchandize or any such document as aforesaid than was possessed or could or might have been enforced by the said person so possessed and entrusted as aforesaid at the time of such deposit or pledge, as a security as last aforesaid, but such person so taking such goods, wares, and merchandize in deposit or pledge shall and may acquire, possess, and enforce such right, title, or interest as was possessed and might have been enforced by such person so possessed and entrusted as aforesaid, any rule of law, usage, or custom to the contrary notwithstanding.

**Agent known to be such entrusted with goods or to whom goods are consigned may make valid contracts for sale in the ordinary course of his business unless purchaser have notice that he is not authorized.** 5. From and after the passing of this Act it shall be lawful to and for any person to contract with any agent entrusted with any goods, wares, or merchandize or to whom the same may be consigned, for the purchase of any such goods, wares, or merchandize and to receive the same of and to pay for the same to such agent, and such contract and payment shall be binding upon and good against the owner of such goods, wares, or merchandize notwithstanding such person shall have notice that the person making and entering into such contract or in whose behalf such contract is made and entered into, is an agent: Provided such contract and payment be made in the usual and ordinary course of business, and that such person shall not when such contract is entered into or payment made, have notice that such agent is not authorized to sell, the said goods, wares, and merchandize, or to receive the said purchase money.



**Agent, known to be such, may make a valid contract of pledge. 6.** From and after the passing of this Act any agent who shall thereafter be entrusted with the possession of goods, or of the documents of title of goods, shall be deemed and taken to be the owner of such goods and documents so far as to give validity to any contract or agreement by way of pledge, lien, or security bona fide made by any person with such agent so intrusted as aforesaid, as well for any original loan, advance, or payment made upon the security of such goods or documents, as also for any further or continuing advance in respect thereof, and such contract or agreement shall be binding upon and good against the owner of such goods and all other persons interested therein notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent.

**Bona fide deposits in exchange protected. Proviso. No lien beyond the value of the goods given up. 7.** Where any such contract or agreement for pledge, lien, or security shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandize, or document of title or negotiable security, upon which the person so delivering up the same had at the time a valid and available lien and security for and in respect of a previous advance by virtue of some contract or agreement made with such agent, such contract and agreement, if bona fide on the part of the person with whom the same may be made, shall be deemed to be a contract made in consideration of an advance within the true intent and meaning of this Act, and shall be as valid and effectual, to all intents and purposes, and to the same extent, as if the consideration for the same has been a bona fide present advance of money: Provided always that the lien acquired under such last mentioned contract or agreement upon the goods or documents deposited in exchange shall not exceed the value at the time of the goods and merchandize which, or the documents of title to which, or the negotiable security which shall be delivered up and exchanged.

**Agent where intrusted, and when in possession. Possession prima facie evidence of entrusting. 8.** Any agent entrusted with the possession of goods or of the documents of title to goods, and possessed of any document of title, whether derived immediately from the owner of the goods or obtained by reason of such agents having been entrusted with the possession of the goods or of any other document of title thereto, shall be deemed and taken to have been entrusted with the possession of the goods represented by such document of title as aforesaid, and all contracts pledging or giving a lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges of and liens upon the goods to which the same relates. Such agent shall be deemed to be possessed of such goods or documents, whether the same shall be in his actual custody or shall be held by any other person subject to his control or for him or in his behalf. An agent in possession as aforesaid of such goods or documents shall be taken for the purposes of this Act to have been intrusted therewith by the owner thereof, unless the contrary can be shewn in evidence.

**Revocation of agency, if unknown, not to affect bona fide contract. 9.** Where any agent or person has been entrusted with and continues in the possession of any goods, or documents of title to goods, within the meaning of this Act, any revocation of his entrustment or agency shall not prejudice or affect the title or rights of any other person who, without notice of such revocation, purchases such goods or makes advances upon the faith or security of such goods or documents.

**What to be deemed a loan on the security of goods. 10.** Where any loan or advance shall be bona fide made to any agent intrusted with and in possession of any goods or documents of title, on the faith of any contract or agreement in writing to consign, deposit, transfer, or deliver such goods or documents of title, and such goods or documents of title shall actually be received by the person making such loan or advance without notice that such agent was not authorized to make such pledge or security, every such loan or advance shall be deemed and taken to be a loan or advance on the security of such goods or documents of title within the meaning of this Act, though such goods or documents of title shall not actually be received by the person making such loan or advance, till the period subsequent thereto. Any contract or agreement made direct with such agent as aforesaid or with any clerk or other person on his behalf, shall be deemed a contract or agreement with such agent. Any payment made whether by money or bills of exchange or other negotiable security shall be deemed and taken to be an advance within the meaning of this Act.

**The Act to protect only transactions bona fide and without notice that agent is not authorised or acting mala fide. 11.** This Act and every matter and thing herein

contained shall be deemed and construed to give validity to such contracts and agreements only and to protect only such loans, advances, and exchanges as shall be made bona fide and without notice that the agent making such contracts or agreement as aforesaid has not authority to make the same, or is acting mala fide in respect thereof against the owner of such goods or merchandize. And nothing herein contained shall be construed to extend to, or protect any lien or pledge, for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien or pledge shall be given; nor to authorize any agent intrusted as aforesaid in deviating from any express orders or authorities received from the owner, but that for the purpose, and to the intent of protecting all such bona fide loans, advances, or exchanges as aforesaid (though made with notice of such agent not being the owner but without any notice of the agent's acting without authority) and to no further or other intent or purpose, such contract or agreement as aforesaid shall be binding on the owner and all other persons interested in such goods.

**Vendee permitted to have possession of documents of title. 12.** Where any goods have been sold or contracted to be sold, and the vendee or any person on his behalf obtains the possession of the documents of title thereto from the vendor or his agents, any sale, pledge, or disposition of such goods or documents by such vendee so in possession or by any other person or agent entrusted by the vendee with the documents within the meaning of this Act shall be as valid and effectual as if such vendee or other person were an agent or person entrusted by the vendor with the documents within the meaning of this Act, provided the person to whom the pledge, sale, or other disposition is made has not notice of any lien or other right of the vendor in respect of the goods.

**Vendors permitted to retain documents of title. 13.** Where any goods have been sold, and the vendor or any person on his behalf continues or is in possession of the documents of title thereto any sale, pledge, or other disposition of the goods or documents made by such vendee or any person or agent entrusted by the vendor with the goods or documents within the meaning of this Act so continuing or being in possession, shall be as valid and effectual as if such vendor or person were an agent or person entrusted by the vendee with the goods or documents within the meaning of this Act, provided the person to whom the sale, pledge, or other disposition is made has not notice that the goods have previously been sold.

**Right of true owner to recover goods in hands of agent or his trustee in bankruptcy. Right of owner to redeem. In case of bankruptcy owner may prove. 14.** Nothing herein contained shall be deemed, construed, or taken to deprive or prevent the true owner or proprietor of any goods, wares, or merchandise from demanding or recovering the same from his factor or agent before the same shall have been sold, deposited, or pledged in accordance with the provisions of this Act, or from the trustee of such factor or agent in the event of his bankruptcy, nor to prevent such owner or proprietor from demanding or recovering of or from any person the price or sum agreed to be paid for the purchase of such goods, wares, or merchandize, subject to any right of set off on the part of such person against such factor or agent, nor to prevent such owner as aforesaid from having the right to redeem such goods or documents of title pledged as aforesaid at any time before such goods shall have been sold, upon repayment of the amount of the lien thereon or restoration of the securities in respect of which such lien may exist; and upon payment or satisfaction to such agent, if by him required, or any sum of money for, or in respect of which such agent would by law be entitled to retain the same goods or documents or any of them by way of lien as against such owner or to prevent the said owner from recovering of and from such person with whom any such goods or documents may have been pledged, or who shall have any such lien thereon as aforesaid, any balance or sum of money remaining in his hands as the produce of the sale of such goods after deducting the amount of the lien of such person under such contract or agreement as aforesaid. Provided always that in case of the bankruptcy of any such agent the owner of the goods which shall have been so redeemed by such owner as aforesaid shall in respect of the sum paid by him on account of such agent for such redemption be held to have paid such sum for the use of such agent before his bankruptcy, or in case the goods shall not be so redeemed the owner shall be deemed a creditor of such agent for the value of the goods so pledged at the time of the pledge; and shall if he shall think fit be entitled in either of such cases to prove for or set off the sum so paid or the value of such goods as the case may be.



**Agent civilly liable for breach of duty.** 15. Nothing herein contained shall lessen, vary, alter, or affect the civil responsibility of an agent for any breach of duty or contract or nonfulfilment of his orders or authority in respect of any such contract, agreement, lien, or pledge as aforesaid.

**Vendor's lien and right of stoppage in transitu when defeated by transfer of document of title.** 16. Where any document of title to goods has been lawfully endorsed or otherwise transferred to any person as a vendee or owner of the goods, and such person transfers such document by indorsement (or by delivery when the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer) to a person who takes the same bona fide and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage in transitu as a transfer of a bill of lading has for defeating the right of stoppage in transitu.

**Interpretation clause.** 17. In construing this Act the word "person" shall be taken to designate a body corporate or company as well as an individual; and words in the singular number shall, when necessary to give effect to the intention of the said Act, import also the plural, and vice versa; and words used in the masculine gender shall, when required, be taken to apply to a female as well as a male.

**Saving clause.** 18. Nothing herein contained shall be construed to give validity to, or in anywise to affect, any contract, agreement, lien, pledge, or other act, matter, or thing made or done before the passing of this Act.

### Bills of Lading.

**No. 5 of 1887.** An Act to amend the Law relating to Bills of Lading (5th March, 1887).

[This Act is identical in all material respects with the Imperial *Bills of Lading Act* (18 & 19 Vic. c. 111).]

### Bills of Exchange.

**a) No. 4 of 1887.** An Act to codify the Law relating to Bills of Exchange, Cheques, and Promissory Notes (5th March, 1887).

[This Act is identical in all material respects with the Imperial *Bills of Exchange Act, 1882*, (45 & 46 Vic. c. 61).]

**b) No. 3 of 1907.** An Act to amend Section 82 of the Bills of Exchange Act, 1887 (1st June, 1907).

[This Act is identical in all material respects with the Imperial *Bills of Exchange (Crossed Cheques) Act, 1807*, (6 Edw. 7, c. 17).]

### Bank Holidays.

**No. 1 of 1907.** An Act to consolidate the Law relating to Bank Holidays and respecting Obligations to make Payments and do other Acts on such Bank Holidays (30th May, 1907).

[This Act contains the ordinary provisions relating to presentment, payment, and notice of dishonour of bills of exchange. The following days are declared to be bank holidays: the anniversary of the birth of the sovereign, the anniversary of the birth of the heir to the throne, 1st January, 24th May, 26th December, with the

provision that if any of said days fall on a Sunday the next following Monday is a bank holiday. The following are also bank holidays: Easter Monday, Whit Monday and the first Monday in August.]

### Bankruptcy.

**a) No. 6 of 1874. An Act for preventing Frauds upon Creditors by Secret Warrants of Attorney to confess Judgment (18th June, 1874).**

[This Act provides that warrants of attorney in order to be valid in the event of the bankruptcy of the person giving the same must be filed within thirty days from the execution thereof. Similarly, *cognovits actionem* must be filed within twenty-one days.]

**b) No. 27 of 1887. An Act to abolish the Distinction as to Priority of Payment which now exists between Specialty and Simple Contract Debts of Deceased Persons, and to amend the Law as to the Administration of the Assets of Insolvent Estates (31st December, 1887).**

[This Act provides, *inter alia*, that the law of bankruptcy relating to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable shall apply to the administration of estates of deceased insolvents and the winding-up of companies.]

**c) No. 11 of 1889. An Act to amend and consolidate the Law of Bankruptcy (20th June 1889).**

[This Act re-enacts substantially the provisions of the Imperial *Bankruptcy Act, 1883*, (46 & 47 Vic. c. 52).]

**d) No. 13 of 1890. An Act to amend the Bankruptcy Act, 1889 (30th March, 1890).**

[This Acts corrects a clerical omission in the principal Act.]

## The Windward Islands.

### Introduction.

#### Government.

By virtue of Letters Patent dated the 30th May, 1877, the 1st October, 1880, the 17th March, 1885, as amended by Letters Patent dated 14th June, 1897, and Instructions under the Royal Sign Manual and Signet to the Governor dated 17th March, 1885, and subsequent Instructions at various dates up to 31st May, 1909, the Islands of Grenada, St. Vincent, (Tobago), and St. Lucia are now consolidated as the Windward Islands under one Governor and Commander-in-Chief appointed by Commission under the Royal Sign Manual and signet. The conjoint operation of these Letters Patent and Instructions created for each of the said islands an executive



council to consist of government officials and such other persons as should be nominated by the Crown: and a legislative council to consist of official members and such other persons as should be nominated by the Crown. All legislation for each island is by virtue of Act 39 & 40 Vict. c. 47, and Royal Orders pursuant thereto vested in the Governor and the legislative Council of the islands. The Governor has a veto over all legislation, and the Crown reserved power to disallow any law and also the right to make laws for the said islands by Order in Council. The Governor is empowered to appoint such judges, commissioners, justices of the peace, and other necessary officers in the several islands as may lawfully be appointed by the Crown. The persons appointed hold their office subject to the Royal pleasure and are liable to suspension from office by the Governor. Power is reserved to the Crown to revoke, alter, or amend the Letters Patent.

By Order in Council of November 17th 1888 the island of Tobago was severed from the Windward Islands and annexed to Trinidad to form the Colony of Trinidad and Tobago.

### Courts.

**Courts of Justice.** By an Order in Council of March 3rd 1859, as amended by Orders in Council of 20th April 1883, 17th November 1888 and 9th February 1901, after reciting that each of the legislatures of Barbados, Grenada, St. Vincent, (Tobago), and St. Lucia, pursuant to the Imperial Act 13 & 14 Vic. c. 15<sup>1</sup>), enabling the Court of Appeal to be established in the West Indian Colonies, had made provisions for the establishment and maintenance of a Court of Appeal for those Islands and for defining its jurisdiction, it was ordered that a Court of Appeal to be called the Court of Appeal of The Windward Islands should be erected and established to consist of and be holden before the Chief Justices of Barbados, Grenada, St. Vincent, Tobago (since excepted by Order in Council of 9th February 1901), and St. Lucia. The jurisdiction of this Court of Appeal in relation to each of those Colonies was defined by the local Acts — specified in the schedule — of Barbados, Grenada, St. Vincent and Saint Lucia.

### Grenada.

#### History and government.

**Historic Incidents of Constitution.** The island was discovered by Columbus on 15th August 1498; it was then inhabited by Caribs. An unsuccessful attempt to settle the island was made by London merchants in 1609, and after various and successive changes in the ownership of the island it was in 1674 annexed to France. It was ceded to Great Britain by the Treaty of Paris of 10th February, 1763, captured by the French in 1779, and in 1783 restored to Great Britain by the Treaty of Versailles.

These treaties of cession originated the power of the Crown over the Colony: in exercise of this power Royal Proclamations were issued, of which the following extracts shew that the laws of Great Britain were made the law of the Colony.

#### Law in force.

Proclamation of King George III of 19th December, 1764, publishing and declaring that the laws of Great Britain are in force in the island as far as the nature and circumstances of the Colony would permit and that all other jurisdictions, offices, commissions, and proceedings for the future not founded on those laws of England are thereby declared to be absolutely determined utterly void and totally.

The Proclamation of King George III of 10th January, 1784, after reciting the treaty of peace with France of the 3d September, 1783, declared that by the restitution of the island the inhabitants, being British subjects, became entitled to the enjoyment of the laws of England as far as the state and circumstances of the Colony permitted and that such laws accordingly became in force.

By an Act passed on 17th March, 1784, to remove doubts as to the revival of the English law in force in 1779 when the Colony was taken by the French, it

<sup>1</sup>) This Imperial Act was repealed by Imperial Act, 52 & 53 Vict. c. 33, but such repeal was not to affect the jurisdiction of the Court as then established under the repealed Act or the powers of the colonial legislatures to vary that jurisdiction.

was declared that such English law — common and statute — as was in force at the time of the capture in 1779 should be in force on and since the restitution of the island to England.

The Colony may therefore be deemed under English common and statute law so far as applicable, and the enactments of its own Statutes. (See *Campbell v. Hall*, 1 Doug. 204, and *Attorney-General v. Stewart*, 2 Mer 143.)

**Statute Law.** The Laws of Grenada have been collected together in a volume published by authority in 1912. Up to the year 1875 the Acts were passed by the Governor, the Council and Assembly of the Colony. The House of Assembly consisted of 26 elected members.

In 1875, by an alteration in the constitution, Acts were passed by the Governor and Legislative Assembly in lieu of the Governor, the Council, and Assembly. In 1876 the House of Assembly voted an Address to the Crown and passed an Act for the abolition of the constitution of the island, and by the Imperial Act 1876, (39 & 40 Vic. c. 47), after reciting the foregoing colonial Act, the Crown was empowered to create and constitute a Government and Legislature, and in 1877 the existing Legislative Council, consisting of the Governor and six official members and seven unofficial members nominated by the Crown, was constituted as the Legislature.

Since 1877 Ordinances have been passed by the Governor with the advice and consent of the Legislative Council.

**Contract.** The common law of England prevails. Stipulations not deemed of the essence of the contract by a Court of Equity are in the Supreme Court to receive the same construction and effect as they would receive in equity.

Ordinance No. 21, 1897 (The Law of Real and Personal Property) makes written documents necessary in the case of certain contracts, sale of goods, guarantee etc.

Contracts by infants, except for necessities, are declared void. No actions are maintainable on ratification after full age of contracts made during infancy.

**Agency.** The law of agency is governed by English law and the doctrines of equity as administered by the English Courts.

**Partnership.** No Ordinances have been passed on the law of partnership, either ordinary or limited. The law governing partnership questions must be sought from English law.

**Companies.** The Companies Ordinance No. 5, 1880, now Rev. Laws, 1911, c. 84, provides for the incorporation, management, and winding up of trading companies and other associations.

**Sale of Goods.** The Merchandise Marks Ordinance (Rev. Laws, 1911, c. 110) provides that in the sale of goods under a mark or trade description the vendor warrants the genuineness of the mark or trade description unless the contrary is expressed in writing by the vendor at the time of sale.

The Ordinance No. 21, 1897 above referred to, requires in the sale of goods of the price of £10 and upwards some memorandum in writing to be signed by the party to be charged by the contract or his authorised agent.

**Common Carrier.** There does not appear to be any ordinance varying the English common law relating to common carriers on land.

**Factors.** There is no ordinance applying the Imperial Factors Act, 1889.

**Bills of Exchange.** The Bills of Exchange Ordinance Rev. Laws, 1911, (c. 101) follows the Imperial Acts. (Rev. Laws, 1911, c. 158.)

**Bankruptcy.** The Bankruptcy Ordinance makes provision for the administration of the estates of bankrupts and follows closely the English Bankruptcy Act, 1883.

**Maritime Law.** The Supreme Court is a colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty (Imperial) Act 1890. The Court follows the decisions of the English Courts in questions of maritime law.

## St. Lucia.

### History and government.

The island of St. Lucia was discovered by Columbus in 1502. It was then inhabited by the Caribs, who held possession until 1635, when it was made the subject of a grant by the King of France, who in 1642 still claimed the sovereignty, which was disputed by the Caribs until peace was concluded with them in 1660. In



1663 the English entered the island and continued in possession until the Peace of Breda in 1667, when the island was restored to the French.

It was annexed to the Crown of France in 1674 and made a dependency of Martinique. After the Peace of Utrecht in 1713 it became the subject of contest between France and England, but the English settlers were forced to evacuate the island and it was declared neutral.

In 1744 the French re-occupied the island and held it until 1748, when by the treaty of Aix-la-Chapelle its neutrality was again declared. On the renewal of war between France and England it was in 1762 surrendered to the English forces, but by the treaty of Paris in 1763 was assigned to France. It was captured by the English in 1782, but again restored to France by the Treaty of Versailles. During the war between England and France, which commenced in 1793, it surrendered in 1794 to the British forces, who made good their conquest and held possession until 1802, when it was restored to France by the Treaty of Amiens; but on the renewal of the war it capitulated to England in 1803 and has since remained in the possession of that country.

These historic facts are taken from the Colonial Office List. The same publication states that after the restoration of order in 1800 the island was governed according to the law and ordinances of the French monarchy. The Courts of Justice were an inferior Court called the "Senechaussee" and a higher Court called the "Conseil Superieur" or Court of Appeal, which was invested with certain executive and administrative functions.

### Law in force.

**Common Law.** The Journal of the Society of Comparative Legislation for 1895 contains an authoritative exposition by the Hon. Sir A. Child, Chief Justice of the Island, as to the law then existing: he states that the common law of England prevails where the codes are silent. It had been introduced by the English judges twenty-five years before, previous to which the French judges applied the *Coutume de Paris*.

**Statute Law.** As regards the Statutory law the Chief Justice in the same exposition states that it consisted of Ordinances, a Civil Code, a Code of Civil Procedure, a Criminal Code and a Code of Criminal Procedure: these Codes have been made law by Ordinances. Imperial Statutes do not operate in the Colony. But some Imperial Statutes, either wholly, or in part, and some Orders in Council, have been adopted by the legislature. An enactment of 1681 by the French King entitled "Arrêt en Règlement du Conseil Superieur portant que la Coutume de Paris et les Ordonnances du Roi seront suivies en cette Ile", was, subject to the provisions of the Civil Code (Article 2485), still in force, as also were the following: "Ordre du Roi au sujet des Cinquante Pas du Bord de Mer" dated 1704; and "Arrêt du Conseil Souverain concernant les cinquante Pas du Roi", dated 1781.

**Publications.** The laws of St. Lucia contained amongst other Ordinances the Criminal Code prepared by the then (1882) Chief Justice John Worrell Carrington on the model of one for Jamaica by Mr. Justice R. S. Wright, but not adopted by that Colony. The laws were published by the Government in 1889; the Civil Code, prepared by the then (1869) Administrator Sir George William Des Voeux, in conjunction with the then (1871) Chief Justice James Armstrong, came into force in 1880.

These introductory notes sufficiently indicate the mixed sources of the law of St. Lucia, complicated by the various historic incidents of conquest, surrender, cession, restoration and final conquest by Great Britain which have been detailed.

The existing commercial law must be ascertained by reference to the Civil Code of 1880 and the Ordinances since passed by the island legislature.

**Commercial and Maritime Law.** The commercial and maritime law is to be found in the Civil Code. This became law on 20th October 1879 by virtue of the Civil Code Ordinance 1877, and Proclamation of the Governor after approval by the Crown.

The Civil Code of St. Lucia was officially published in London in 1879 by the Royal Printers. It contains 2486 separate articles. By the final provisions of the code the laws in force at the time of the coming into force of the code are abrogated in all cases: 1. In which there is a provision in the Code having that effect expressly

or by implication; 2. In which such laws are contrary to or inconsistent with any provision in the Code; 3. In which express provision is made in the Code upon the particular matter to which such laws relate: Except always that &c. &c. as above in the Code of Civil Procedure.

The Civil Code is divided into Four Parts as follows: Part First: Persons. Part Second: Property, its ownership and different modifications. Part Third: The Acquisition and Exercise of Right of Property. Part Fourth: Commercial Law. This Part is divided into seven books as follows: Book First: Bills of Exchange, Notes, and Cheques. Book Second: Merchant Shipping. Book Third: Affreightment. Book Fourth: The carriage of Passengers in Merchant Vessels. Book Fifth: Insurance, General Provisions, Marine, Fire and Life Insurance. Book Sixth: Bottomry and Respondentia. Book Seventh: Bankruptcy.

**Companies.** The Companies Ordinance, 1869, extends to the Colony most of the details and the general provisions of the Companies (Imperial) Act of 1862.

By the amending Ordinance No. 4, 1909, it is enacted that no company shall be registered under a name containing the word "Empire" or the word "Imperial" without the permission of the Governor in writing under his hand.

**Merchandise Marks.** The Merchandise Marks Ordinance, 1888, extends to the Colony the provisions of the Imperial Merchandise Marks Act, 1887.

**Bills of Exchange.** The Bills of Exchange Ordinance 1893, repeals the articles relating to Bills of Exchange in the Civil Code and Code of Civil Procedure and extends to the Colony the Bills of Exchange (Imperial) Act, 1882.

By Amending Ordinance 1907 it is enacted that a banker receives payment of a crossed cheque for a customer within the meaning of Section 82 of the principal Ordinance, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

### Courts.

**Legal Procedure.** The Royal Court Ordinance, 1888, constitutes one Supreme Court of Judicature for the Colony to be called "the Royal Court of St. Lucia".

The Court is a Court of Record with all the authorities and functions incident to such a Court according to the law of England.

An appeal lies from the judgment of the Court to the Court of Appeal for the Windward Islands.

Legal procedure is regulated by the Code of Legal Procedure, which by the Civil Procedure Ordinance, 1879, after approval by the Crown and Proclamation by the Governor was to become law. It was duly proclaimed and became law on the 15th April, 1882.

The Code in one volume was officially published by the Government Printers in London in 1881. The Code is divided into 1087 separate articles. Its final provision abrogates all laws concerning procedure at the time of the coming into force of the Code: 1. In all cases in which the Code contains any provision indicating that effect either expressly or by implication; 2. In all cases in which such laws are contrary to or inconsistent with any provision of the code, or in which express provision is made by this Code upon the particular matter to which such laws relate. Except always that, as regards proceedings, matters, and things anterior to the coming into force of the Code, and to which its provisions could not apply without having a retroactive effect, the provisions of law, which without the Code would apply to such proceedings, matters, and things, remain in force, and apply to them and the Code applies to them only so far as it coincides with such provisions.

### St. Vincent.

#### History and government.

The historic facts affecting the constitution and laws of St. Vincent are the assertion of English sovereignty over the island in 1627, when King Charles I of England included it in a grant to the Earl of Carlisle. No settlement by English settlers then followed. Before the year 1779, when the island was captured by the French, it had been included in the Treaties of Aix-la-Chapelle, (1748) when its neutrality was proclaimed, and Paris (1763) when it was ceded to Great Britain. By the Treaty of Versailles in 1783 the island was restored to Great Britain. The



successive incidents in the wars between England and France, when the island was captured and re-captured, might raise questions as to what national law prevailed, but it is authoritatively stated in the Second Report of the Commissioner of Inquiry into the Administration of Justice in the West Indies dated 1826 (Parliamentary Paper, printed by order of the House of Commons, 1826) that the laws then in force in the island were, besides their own Acts of Assembly, so much of the laws of England adapted to the circumstances of the Colony as existed prior to the King's Proclamation of the 7th October, 1763, and such Acts of Parliament passed since as were expressly applicable to the colonies. It is stated in an official communication in 1897 to the Society for Comparative Legislation from the then Attorney-General of the Colony (Journal of the Society Vol. 1 p. 177) that the common law of England prevails in St. Vincent.

### Law in force.

**Commercial Contracts.** Sale of goods, common carriers, agents. In questions on these contracts the common law of England and decisions of English courts prevail.

**Companies.** The Companies Act, 1874, extends to the Colony most of the provisions and regulations of the Companies (Imperial) Act of 1862.

**Partnership.** The Act to amend the Law of Partnerships, 1874, provides that a person advancing money to persons in trade upon a contract in writing whereby the lender shall receive a rate of interest varying with the profits, or a share of the profits, shall not by reason only of such contract be deemed a partner. Remuneration of servants or agents of traders by a share of profits shall not of itself constitute partnership. Widows and children of a deceased partner, or vendors of the goodwill of a business, receiving by way of annuity a portion of the profits shall not by reason only of such receipt be deemed partners. But in the event of bankruptcy the claims of such lenders and annuitants are postponed to the claims of the other creditors. By The Companies Act, 1874, Amending Ordinance, 1908, companies are not to be registered under a title including words "Empire" or "Imperial" without the consent of the Governor. The Partnership (Imperial) Act, 1890, has not been extended to the colony by any ordinance up to 1911 inclusive.

**Merchandise Marks.** The Merchandise Marks Ordinance, 1888, consolidates and amends the law relating to fraudulent marks on merchandise. It follows, with some variations necessary to make it applicable to the colony, the principle provisions of the Merchandise Marks (Imperial) Act, 1887.

**Bills of Exchange.** The Bills of Exchange Ordinance, 1895, extends to the Colony the Bills of Exchange (Imperial) Act, 1882, and by the Amending Act No. 1, 1907, the provision as to crossed cheques, as in Grenada and other colonies.

**Bankruptcy.** The Bankruptcy Ordinance, 1887, provides for the administration of the estates of bankruptcy. It is based on the Bankruptcy (Imperial) Act 1883. It is amended by the Bankruptcy (Amending) Ordinance, 1889.

**Maritime Law.** The English law as applied in the Imperial Courts prevails.

### Courts.

**Legal Procedure.** The Code of Civil Procedure Ordinance, 1884, regulates all actions and suits at common law or in equity in the Supreme Court. The Act is divided into the following parts: Part I: Of the Institution of Suits. Part II: Of the Pleadings and Evidence. Part III: Interlocutory Proceedings: the Trial of Causes. Part IV: Of Judgment and Execution. Part V: Miscellaneous, Provisions, Arbitration, &c.

The Schedule contains a list of Acts repealed, table of Forms of pleading, Writs, Orders, and Warrants. Appeals from decisions of the Supreme Court are to the Court of Appeal for the Windward Islands (q. v. supra).

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Name of report.	No. of volumes.	Period.	Method of citation.
Judgments of Windward Islands Court of Appeal	1	1866—1904	W. I.

## Statutes.

### A. Grenada.<sup>2)</sup>

#### Companies.

**Rev. Laws, 1911, c. 84. The Companies Ordinance.**

[This Ordinance incorporates Ords. No. 5 of 1880 and No. 4 of 1909. The Law is substantially the same as that prevailing in England.]

<sup>1)</sup> An official compilation within the meaning of the *Imperial Evidence (Colonial Statutes) Act, 1907*. — Ord. No. 3 of 1908. — <sup>2)</sup> As in force 1st April, 1912. There are no statutes relating to partnership or factors. The law relating to sale of goods is not codified.



**Bills of Lading.****Rev. Laws, 1911, c. 102. The Bills of Lading Ordinance.**

[This Ordinance incorporates Act No. 60 and is identical in all material respects with the Imperial *Bills of Lading Act*, (18 & 19 Vic. c. 111).]

**Bills of Exchange.****Rev. Laws, 1911, c. 101. The Bills of Exchange Ordinance.**

[This Ordinance incorporates Ords. No. 2 of 1893 and No. 7 of 1907, and is identical in all material respects with the Imperial *Bills of Exchange Act*, 1882, (45 & 46 Vic. c. 52), as amended by the *Bills of Exchange (Crossed Cheques) Act*, 1907, (6 Edw. 7 c. 17).]

**Bank Holidays.****Rev. Laws, 1911, c. 100. The Bank Holidays Ordinance.**

[This Ordinance incorporates Act No. 171 and Ord. No. 16 of 1909. The following days are declared bank holidays: the birthday of the reigning sovereign, 1st January, 2d January, Easter Monday, Whit Monday, 24th May, Corpus Christi, the first Monday in August, 26th December. If any of these days, not being a specified day of the week, falls on a Sunday, the following day is also a bank holiday.]

**Bankruptcy.****a) Rev. Laws, 1911, c. 125. The Fraudulent Conveyances Act (1846).**

[This Act incorporates the provisions of Act No. 20, and declares every conveyance or gift of any land, goods, or chattels, made with intent to hinder, delay, or defraud creditors to be void as against the creditors so hindered, delayed, or defrauded. Bona fide purchasers are protected.]

**b) Rev. Laws, 1911, c. 158. The Bankruptcy Ordinance.**

[This Ordinance incorporates Ord. No. 24 of 1887. The law is substantially the same as that contained in the Imperial *Bankruptcy Act*, 1883, (46 & 47 Vic. c. 52).]

Under the Bankruptcy Ordinance, 1882, § 16, it was held that the Supreme Court of Grenada has no jurisdiction in bankruptcy or insolvency, and that it never had any jurisdiction in bankruptcy. Under the local Act No. 136 insolvency jurisdiction was conferred, but that Act was repealed by the *Debtors Ordinance*, 1881. — *Gillespie v. Clyne*, (Grenada, 1884), 1 W. I. 58, 63.

## B. St. Lucia.<sup>1)</sup>

### Application of Law.

**a) No. 1. Arrêt en Règlement du Conseil Supérieur portant que la Coutume de Paris et les Ordonnances du Roi seront suivies en cette Ile (5 novembre 1681).**

. . . Le Conseil. . . a ordonné et ordonne que ladite Coutume de Paris, ensemble les dites Ordonnances de Sa Majesté susdatées<sup>2)</sup>, seront enregistrées sur les registres du Conseil et de la juridiction ordinaire de cette Ile Martinique, pour être exécutés suivant leur forme et teneur.

### b) Civil Code, 1879.

**2142.** All cases of a commercial nature, in respect of which there is no provision in this Code, shall be governed by the law of England.

**2143.** Cases relating to the sale of corporeal moveables, when one of the parties to the sale is a trader, to bills of exchange, cheques, or promissory notes, to insurance, passengers, shipping, affreightment, bottomry, or respondentia, are considered always as of a commercial nature.

In respect of all of the topics mentioned in this section there are specific provisions in the Civil Code or in local Ordinances.

### Partnership.

#### Civil Code, 1879.

[1730—1797. Are identical in all material respects with the provisions of the Quebec Civil Code, arts. 1830—1900, reprinted pp. 569—576 *supra*.]

### Companies.

#### a) Civil Code, 1879.

[312—332, and 1786—1788. Are identical in all material respects with the provisions of the Quebec Civil Code, arts. 352—359, 371—373, and 1889—1891, reprinted, *supra*, pp. 579, 581].

**b) No. 21. An Ordinance to provide for the Incorporation, Management, and Winding-up of Joint Stock Companies, and other Associations (13th January, 1869).**

[This Ordinance adopts in general the provisions of the Imperial *Companies Act, 1862*, (25 & 26 Vic. c. 89).]

<sup>1)</sup> As in Force, 1st January, 1912. — <sup>2)</sup> The Ordinances referred to are those of April, 1667, August, 1669, August, 1670, and March, 1673. The Proclamation of 23d June, 1803, preserved the existing laws. By the Civil Code, art. 2485, the old law is repealed in so far as it is expressly or impliedly superseded by provisions of the Code. All of these laws may now be regarded as superseded in so far as they relate to commercial matters. — Cp. Civil Code, 1879, arts. 2142, 2143, reprinted *infra*. The Coutume de Paris was in force in the French colonies by virtue of the arrêt of May, 1664, establishing the West India Company. But no ordinance of France was in force in the Colony, unless registered there or extended to the colonies by the order of the parent state. — *Duboulay v. Duboulay*, (St. Lucia, 1866), 1 W. I. 3; affirmed L.R. 2 P.C. 430. See also *Gahan v. Lafitte*, (1842), 3 Moo. P.C. 383.



**c) No. 4 of 1909. An Ordinance to amend the Companies Ordinance, 1869, (21st August, 1909).**

[This Ordinance prohibits the registration of companies having a name importing Royal or Government patronage.]

**Sale of Goods.  
Civil Code, 1879.**

[1382—1454. Are identical in all material points with the provisions of the Quebec Civil Code, arts. 1472—1544, reprinted, *supra*, pp. 615—260, except: Art. 1448 of the St Lucia Civil Code (corresponding to art. 1538 of the Quebec Code) reads as follows: 1448. The judgment for avoidance by reason of non-payment of the price cannot grant a delay for a longer period than eight days. Art. 1453 of the St. Lucia Civil Code (corresponding to art. 1543 of the Quebec Code) omits the last sentence relating to insolvency.]

**Factors.  
Civil Code, 1879.**

[1636—1654. Are identical in all material respects with the Quebec Civil Code, arts. 1736—1754, reprinted, *supra*, pp. 622—623.]

**Affreightment.  
Civil Code, 1879.**

[2224—2296. These articles are identical in all material respects with Quebec Civil Code, arts. 2407—2460, reprinted, *supra*, pp. 623—627.]

The principal points of difference are the following: 2266. (= Quebec, 2429). The words "observed in the place of delivery" are omitted. 2269. (= Quebec, 2433). Reads as follows: The owner of a seagoing ship is not liable for the loss or damage, occurring, without his actual default or privity: 1. Of anything whatsoever on board any such ship, by reason of fire, or 2. Of any gold, silver, diamonds, watches, jewels, or precious stones on board such ship, by reason of any robbery, embezzlement, making away with, or secreting of the same; unless the owner or shipper thereof has, at the time of shipping the same, inserted in his bill of lading, or otherwise declared in writing, to the master or owner of such ship, the true nature or value of such articles. 2270. (= Quebec, 2434) reads as follows: Where any damages or loss is caused to anything on board a sea-going ship, without the fault or privity of the owner, he is not answerable in damages to an extent beyond the value of the ship, and the freight due, or to grow due, during the voyage; provided that such value shall not be taken to be less than fifteen pounds sterling per registered ton, and that the owner shall be liable for every such loss and damage arising on distinct occasions to the same extent as if no other loss or damage had arisen. 2271. (not in Quebec Code): The freight mentioned in the last preceding article is, for the purpose thereof, deemed to include the value of the carriage of any goods belonging to the owners of the ship, passage money, and the hire due or to grow due under any contract; except only such hire, in the case of a ship hired for time, as may not begin to be earned until the expiration of six months after the loss or damage. 2272. (not in Quebec Code): The provisions contained in articles 2269 and 2270 do not apply to any master or seaman, being also owner or part owner of the ship to which he belongs, in such manner as to take away or lessen the liability to which he

is subject in his capacity as master or seaman. 2277. (= Quebec, 2441). The St. Lucia Code adds: The judge may also make further deduction in consideration of any unreasonable conduct of the master which has prevented the carrying of freight on the return voyage. 2268. (not in Quebec Code): The owner or master is not liable for loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of the ship within any district where the employment of such pilot is compulsory by law.

### Marine Insurance. Civil Code, 1879.

[2303—2401. These articles are identical in all material respects with the Quebec Civil Code, arts. 2468—2567, reprinted, *supra*, pp. 629—636.]

The principal points of difference are the following: 2305. (= Quebec, 2471). Insurance is always a commercial contract. 2340. (= Quebec, 2506). In insurance for a shipowner it is an implied warranty that the ship shall be furnished with the necessary papers, and that there shall have been fulfilled with respect to her the conditions required by the laws and treaties of the country to which she is bound, and by the law of nations. 2386. (= Quebec, 2552). This article contains an 8th heading: Other salvage.

### Bills of Exchange.

a) No. 11 of 1893. An Ordinance to amend the Law relating to Bills of Exchange, Cheques, and Promissory Notes (25th August, 1893).

[This Ordinance is identical in all material respects with the Imperial *Bills of Exchange Act, 1882*, (45 & 46 Vic. c. 61).]

A note or bill of exchange given in discharge or in respect of a contract which is illegal, as a gaming contract or bet, is void as between the original parties, but is valid in the hands of any person to whom it has been transferred for value, without notice of the illegal consideration. — Civil Code, 1879, art. 1824.

b) No. 8 of 1907. An Ordinance to amend Section 82 of the Bills of Exchange Ordinance, 1893 (24th August, 1907.)

[This Ordinance is identical in all material respects with the Imperial *Bills of Exchange (Crossed Cheques) Act, 1907*, (6 Edw. 7, c. 17).]

### Bank Holidays.

a) No. 33. An Ordinance to make Provision for Bank Holidays, and with respect to Obligations to do certain Acts on such Days (1st April, 1874).

b) No. 4 of 1897. An Ordinance to amend the Bank Holidays Ordinance, 1874 (13th August 1897).

c) No. 7 of 1901. An Act to amend the Bank Holidays Ordinance, 1874 (11th October, 1901).

[These Ordinances contain the ordinary provisions in respect to payment, protest, and notice of dishonour of bills of exchange, falling due on a bank holiday.



When the day following a bank holiday is a Sunday the act may be done on the following Monday. The following days are declared to be bank holidays: 1st January, Good Friday, Easter Monday, Corpus Christi Day, Christmas day, 26th December, 24th May, His Majesty's birthday, any day appointed by Proclamation, and every Wednesday, not being otherwise a bank holiday, from and after the hour of noon.]

## Bankruptcy.<sup>1)</sup> Civil Code, 1879.

**2447.** Bankruptcy means in this Code the condition of a bankrupt constituted as such under the provisions of this Chapter.

**2448.** Only a trader can become bankrupt, and he is constituted as such:

1. By adjudication; and 2. By assignment of his property.

**2449.** Adjudication of bankruptcy is upon the petition of any creditor for an amount of fifteen pounds or upwards, after proof of any of the following allegations:

1. That he (the debtor) has declared in writing that he is unable to pay his debts;
2. That he (the debtor) is notoriously unable to pay his debts, and has refused to make an assignment of his property according to the provisions of this Chapter;
3. That being unable to pay his debts, he remains out of the Colony;
4. That he has permitted any of his property to be taken in execution;
5. That he is confined in gaol, in virtue of a writ of *capias*, and has remained so confined for fourteen days;
6. That having been arrested in virtue of a writ of *capias*, he has given security that he will not leave the Colony;
7. That he has been condemned to imprisonment for any of the causes for which imprisonment may be awarded under this Code;
8. That he is concealing himself or secreting his property in order to avoid attachment or execution;
9. That he has assigned, removed, or disposed of his property with intent to defraud any creditor, or to delay the payment of any debt.

**2450.** On adjudication of bankruptcy, the bankrupt is required to make, upon pain of imprisonment, within such delay as may be allowed by the Court or Judge, or in the absence, neglect, or refusal of the bankrupt, the Colonial Trustee shall make in his place a schedule supported by affidavit, and containing a statement of:

1. All his debts, whether due by him alone or jointly with others.
2. All the liabilities, whether privileged, hypothecary, or otherwise, to which he or his property is subject.
3. All claims made upon him, including those not admitted to be valid or just.
4. The names and addresses of all his creditors, of the persons who have made claims and of the persons to whom his property is hypothecarily liable.
5. All the debts due or to become due to him.
6. All his property, moveable or immoveable, whether in his possession or substituted in his favour.
7. All his rights and interest in any property or action which may be of value and available to his creditors.
8. A list of all his books of account.
9. The names and addresses of all persons indebted to him.

**2451.** The assignment of property which constitutes bankruptcy is made by notarial deed to the Colonial Trustee as curator for the benefit of all the creditors of the debtor making the assignment, and must be accompanied by a schedule alike in all respects to that described in the last preceding article.

**2452.** The schedule mentioned in the two last preceding articles is filed in the office of the Colonial Trustee who advertises a notice of its having been so filed in the *Gazette*.

<sup>1)</sup> The Civil Code, 1879, further contains the following provisions: **965.** Creditors may impeach the fraudulent acts of their debtors, according to the rules provided in this section. **966.** A contract cannot be avoided unless it is made by the debtor, with intent to defraud, and will have the effect of injuring the creditor. **967.** A gratuitous contract is deemed to be made with intent to defraud, if the debtor be insolvent at the time of making it. **968.** An onerous contract made by an insolvent debtor to a creditor knowing his insolvency is deemed to be made with intent to defraud, and the creditor may be compelled to restore what he has received or the value thereof, for the benefit of the creditors according to their respective rights. **970.** An onerous contract made with intent to defraud on the part of the debtor, but in good faith on the part of the person with whom he contracts is not voidable; saving the special provisions applicable in cases of bankruptcy. **971.** No contract or payment can be avoided under this section at the suit of a subsequent creditor, unless he is subrogated in the rights of an anterior creditor, except in the cases mentioned in the Chapter on Bankruptcy.

**2453.** The bankrupt may, with the leave of the Court or Judge, from time to time, add to or alter the schedule filed by or for him.

**2454.** The bankrupt may retain, but must include in his schedule under a separate head, such property in his possession as, against himself, cannot be attached or taken in execution.

**2455.** With the exception referred to in the last preceding article, all the property of the debtor, including all books of account and all rights of action, and all the property which he may acquire until he obtained his discharge from bankruptcy, vest in the Colonial Trustee, as curator, from the date of the petition in the case of adjudication (the adjudication having for such purpose a retroactive effect) or from the date of assignment is or is not in due form and accompanied by the prescribed formalities.

**2456.** After the adjudication or assignment, as the case may be, the Court or Judge may, on the application of any creditor (notice of such application and of the day and hour at which it is to be made having been given by advertisement in two numbers of the *Gazette*), appoint another curator in the place of the Colonial Trustee.

**2457.** The petition mentioned in the last article may be contested by the bankrupt, by any creditor, or by the Colonial Trustee, and the Court or Judge decides upon it only after hearing all the parties.

**2458.** A curator other than the Colonial Trustee must give security to the satisfaction of the Court or Judge.

**2459.** The property of a bankrupt, whether by assignment or adjudication, devolves upon the curator, and vests in him, without any formal transfer from the Colonial Trustee, and he is responsible for the management up to the time of delivery to the purchase after its sale.

**2460.** The bankrupt, however, up to the time of its sale by the curator, may recover his property by the discharge of all the debts due by him, and the payment of all legal costs connected with the bankruptcy, and of the curator's administration, and upon the Court or Judge certifying that such discharge and payment is made, and, upon the registration of such certificate in the registry office, the property remaining unsold reverts in the bankrupt without any formal transfer from the curator.

**2461.** The curator obtains the sale of the bankrupt's property by the sheriff, and such sale, whether of moveables or immoveables, is subject to the same conditions and formalities and has the same effect as a judicial sale.

**2462.** The purchaser from the sheriff of a debt belonging to the assigned property may sue for it in his own name, but no warranty, except as to good faith is created by the sale, not even that the debt is due.

**2463.** Opposition may be made to the sale in the same manner as to any other judicial sale.

**2464.** The curator distributes the proceeds of the sale, and with this object makes a scheme of collocation. He takes notice only of claims supported by affidavit, and he may require any creditor to declare upon oath if he has or has not received any amount in part payment of the debt on which his claim is founded, and if he has received any to declare also the amount and particulars of the payment, and any creditor who refuses or neglects within a reasonable time to make such declaration shall not be collocated.

**2465.** The costs properly incurred in legal proceedings against the debtor up to, but not those incurred after, the time when the insolvency is made known to the creditor by advertisement in the *Gazette*, or otherwise, are added to the claim of the creditor.

**2466.** The curator, when the scheme or collocation is prepared, gives notice in the *Gazette* that it may be inspected at his office.

**2467.** Any item of the scheme may be contested before the curator, and an appeal lies from this decision to the Court or Judge.

**2468.** When the proceeds of the property have been paid to the creditors, the curator lodges with the prothonotary all documents connected with the estate.

**2469.** The curator is regarded as an officer of the Court. The performance of his duties may be enforced.

**2470.** A debtor notoriously insolvent, who refuses to make assignment of his property or to arrange with his creditors, may be arrested by *capias* in the manner set forth in the Code of Civil Procedure.



**2471.** All contracts without consideration of with a merely nominal consideration, made by a trader afterwards becoming a bankrupt, with any person within three months next preceding the assignment or petition for adjudication of bankruptcy and all contracts by which creditors are injured or delayed, made by a trader unable to meet his engagements, and afterwards becoming a bankrupt, with a person knowing such inability or having probable cause for believing such inability to exist, or after such inability is public and notorious, are presumed to be made with intent to defraud creditors, and may be avoided by the Court.

**2472.** A contract for consideration by which creditors are injured or delayed, made by a trader unable to meet his engagements with a person ignorant of such inability, and before it has become public and notorious, but within thirty days before the assignment of property or petition for adjudication of bankruptcy may be set aside by the Court, upon such terms as to protection from actual loss or liabilities by reason of such contract as the Court may order.

**2473.** Any sale, deposit, pledge, or transfer made by a trader, within three months of the assignment of property or of the petition for adjudication whereby any creditor obtains an unjust advantage over the others, may be set aside by the Court, and the subject or its value may be recovered by the curator for the benefit of the estate.

**2474.** A payment made within three months next before the assignment of property or of the petition for adjudication by a trader unable to meet his engagement in full, to a person knowing or having probable cause for knowing the existence of the inability, may be recovered for the benefit of the bankrupt's estate. But if any valuable security has been given up in consideration of such payment by the person from whom repayment is demanded, such security, or the value thereof, must be restored to such creditor.

**2475.** If within three months of the assignment or petition for adjudication, a debt due by the trader who becomes bankrupt be purchased with a view to set off by a person indebted to him, who knows or has probably<sup>1)</sup> cause for knowing his inability to meet his engagements the set off is not allowed. The purchaser remains liable for his whole debt to the insolvent's estate, and as regards the purchased debt, he obtains satisfaction only to the extent that the original creditor would have obtained it.

**2476.** Gifts made by an insolvent within three months previous to the assignment or petition for adjudication may be set aside, and the subject of the gift, or its value, recovered from the donee by order of the Court.

**2477.** If the insolvent holds under a lease extending beyond the current year, the curator may keep the property and lease the same, or he may by advertisement in two numbers of the *Gazette* advertise the lease for sale and such sale shall be made subject to the payment of the rent and to all the covenants contained in the lease, and all such covenants shall be binding upon the lessor and purchaser as if the lease had been made between them.

**2478.** The lessor cannot claim payment in advance for more than three months.

**2479.** A notarial deed of composition executed by the majority of creditors for sums of £15 and upwards, who represent at least three-fourths of the liabilities of a bankrupt trader, is binding upon the other creditors as though they were parties to it.

**2480.** The bankrupt desirous of obtaining his discharge gives notice by an advertisement, published in two numbers of the *Gazette*, that he will on a day to be therein named, and which must not be less than two months after the last publication, and not less than twelve months from the date of the assignment of property or petition for adjudication, apply to the Court for his discharge from liability or for the confirmation of a deed of composition, as the case may be.

**2481.** Any creditor may oppose the granting of the discharge or confirmation of the deed, either upon the ground of fraud or fraudulent preference, or of the fraudulent retention and concealment by the bankrupt of some portion of his estate or effects, or of his evasion, prevarication, or false swearing upon examination as to his estate or effects, or of fraud or of fraudulent preference in procuring the consent of the creditors to the execution of the deed of composition, or of the insufficiency in number or value of the creditors executing the same, or because subsequent to

<sup>1)</sup> Sic.

the coming into force of this Code the insolvent has not kept a book showing his receipts and disbursements and such other books of account as are necessary for his trade, or because he has failed to deliver to the curator any such books which have been at any time kept by him.

**2482.** A discharge does not affect the position of a person secondarily liable for the debt of the bankrupt, either as drawer or endorser of negotiable paper, as guarantor, surety, or otherwise, nor of a partner, or other person liable jointly or severally with the insolvent for a debt, nor does it affect a mortgage, lien, or collateral security held by a creditor.

**2483.** The Court, after hearing the parties, either confirms or annuls the deed of composition or grants a discharge from liability; and such discharge may be either absolute or conditional, and ordered to take effect at once or after any stated time.

**2484.** A judgment in confirmation of a deed of composition, or of discharge from liability may be revoked by the Court, if it should subsequently be made to appear that any fraud or false representation has in any way contributed to it.

## C. St. Vincent.<sup>1)</sup>

### Companies.

**a) No. 384. An Act for the Incorporation, Management, and Winding-up of Trading Companies and other Associations (19th June, 1874).**

[This Act re-enacts substantially the *Imperial Companies Act, 1862*, (25 & 26 Vic. c. 89).]

**b) No. 13 of 1909. An Ordinance to amend the Companies Act, 1874 (4th November, 1909).**

[This Act prohibits the registration of companies' names implying Royal or Government patronage, or where the names are identical with or closely resemble the names of existing companies.]

### Bills of Exchange.

**a) No. 3 of 1895. An Ordinance to codify the Law relating to Bills of Exchange, Cheques, and Promissory Notes (14th May, 1895).**

[This Ordinance is identical in all material respects with the *Imperial Bills of Exchange Act, 1882*, (45 & 46 Vic. c. 61).]

**b) No. 1 of 1907. An Ordinance to amend Section 82 of the Bills of Exchange Ordinance, 1895 (20th June, 1907).**

[This Ordinance is identical in all material respects with the *Imperial Bills of Exchange (Crossed Cheques) Act, 1907*, (6 Edw. 7, c. 17).]

<sup>1)</sup> As in force 1st January, 1912. There are no statutes relating to bills of lading or factors.



### **Bank Holidays.**

**a) No. 8 of 1900. An Ordinance to make Provision for Bank Holidays and respecting Obligations to make Payments and do other Acts on such Bank Holidays (3d August, 1900).**

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**b) No. 6 of 1901. An Ordinance to amend the Bank Holidays Ordinance, 1900 (25th May, 1901).**

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**c) No. 12 of 1910. An Ordinance to amend the Bank Holidays Ordinance, 1900 (23d December, 1910).**

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[These Ordinances contain the usual provisions in reference to the presentment, payment, and notice of dishonour of bills of exchange, and empower the Governor in Council to appoint special bank holidays by proclamation. The following days are declared bank holidays: The birthday of the reigning sovereign, 1st January, 2d January, Easter Monday, Whit Monday, 24th May, Corpus Christi, the first Monday in August, 26th December. If any of the above holidays not designated to fall on a specific day of the week falls on a Sunday the Monday immediately following is a bank holiday.]

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### **Bankruptcy.**

**a) No. 26 of 1887. An Ordinance to provide for the Administration of the Estates of Bankrupts.**

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**b) No. 9 of 1889. An Ordinance to amend the Bankruptcy Ordinance, 1887.**

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[These Ordinances substantially embody the provisions of the Imperial *Bankruptcy Act, 1883*, (46 & 47 Vic. c. 52.)]

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